



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
-----)	ISCR Case No. 09-04230
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John Bayard Glendon, Esquire, Department Counsel
For Applicant: Edward P. Epstein, Esquire

February 26, 2010

Decision

CURRY, Marc E., Administrative Judge:

Applicant's history of drug involvement generates a security concern. Applicant's drug use occurred during his college years. He has not used any illegal drugs for a year. Since graduating, he has obtained a job with a defense contractor, where he has excelled, and he no longer associates with his friends who use illegal drugs. Applicant has mitigated the drug involvement security concern. Clearance is granted.

On August 31, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, Drug Involvement. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on September 29, 2009, admitting all of the allegations except SOR subparagraph 1.a, and requesting a hearing. The case was assigned to me on November 3, 2009. On November 20, 2009, a notice of hearing was

issued, scheduling the case for December 15, 2009. The hearing was held as scheduled. At the hearing, I received three government exhibits, twelve Applicant exhibits, and Applicant's testimony. The transcript was received on December 22, 2009.

Findings of Fact

Applicant is a 22-year-old single man. He graduated from college in May 2009, earning a 3.8 grade point average with a major in logistics, transportation, and supply chain management, and a second major in marketing (Tr. 16). While in college, he was president of the university's Marketing and Logistics Society (AE J). The university where Applicant graduated has one of the top supply chain management programs in the country (AE D, Reference Letter of Program Coordinator). Applicant was one of the program's top students (*Id.*).

Since graduating from college, Applicant has worked for a defense contractor as a supply chain program manager (AE B). He was recruited through the company's professional development program (*Id.*). He manages an 18 million dollar research and development program (Tr. 18). His company assigns mentors to new employees "to help familiarize [them] with the corporate culture" (AE F). According to Applicant's mentor, he is an industrious, conscientious worker who is eager to learn (*Id.*). The senior level department manager characterizes Applicant as one of the best young employees with whom she has ever worked in her five years at the company (AE A).

Applicant used illegal drugs while in college, including marijuana, cocaine, ecstasy, and hallucinogenic mushrooms (Tr. 25-26). Also, while in college, he misused Aderal, a drug typically prescribed to children with attention-deficit disorder to increase focus (Tr. 33). (Tr. 33). Applicant used the cocaine and ecstasy on three occasions, respectively, and the hallucinogenic mushrooms twice. Applicant abused Aderal during final exam periods to help him study for long periods of time (Tr. 33).

Applicant used marijuana four times per week at social gatherings (GE 2 at 3). He stopped using it in February 2009, shortly before completing his security clearance application; and he has not used it, nor any other illegal drug since then (Tr. 18). He disclosed his college drug use and discussed it in detail on his security application, as required (GE 1).

Applicant no longer associates with the friends with whom he used illegal drugs. He has no intention of ever using illegal drugs again, and supported this statement of intent with an affidavit executed the day of the hearing (AE L).

Applicant volunteers in his community by mentoring children in a local public school system approximately once every other week (Tr. 21). Typically, he eats lunch with them or accompanies them to recess (Tr. 29).

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

Analysis

Guideline H, Drug Involvement

Under this guideline, "use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations" (AG ¶ 24). Applicant's history of illegal drug use triggers the application of AG ¶¶ 25(a), "any drug abuse," and 25(c), "illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia."

One year of abstinence from illegal drugs is not a long time given the amount of marijuana Applicant smoked and the length of time he used it. Conversely, he has graduated from college and disassociated himself from his drug-using friends. Moreover, Applicant no longer lives on campus, the environment where his classmates used illegal drugs.

Most importantly, Applicant has matured into a responsible adult who performs exceptionally well on the job, and spends his spare time mentoring youth. Consequently, under these circumstances, the time that has elapsed since Applicant last used illegal drugs constitutes an appropriate period of abstinence, and his stated intention, as set forth in the affidavit he submitted, not to use illegal drugs in the future is credible. The following mitigating conditions are applicable:

AG ¶ 26(a) - the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgment."

AG ¶ 26(b) - a demonstrated intent not to abuse any drugs in the future, such as:

- (1) disassociation from drug-using associates and contacts;
- (2) changing or avoiding the environment where drugs were used;
- (3) an appropriate period of abstinence;
- (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant has mitigated the Drug Involvement security concern.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Applicant's immaturity was a major contributing factor for his past drug involvement. Given the maturity he has demonstrated since graduating from college (disassociating from his drug-using friends, excelling on the job, volunteering in the community), I conclude that his college drug use is not predictive of future behavior. Upon evaluating this case in the context of the whole person concept, I conclude Applicant mitigated the Drug Involvement security concern.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H: FOR APPLICANT

Subparagraphs 1.a-1.g: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge