



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



In the matter of:)
)
) ISCR Case No. 09-04240
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *pro se*

March 31, 2010

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) for his employment with a defense contractor, on March 4, 2009 (Gov. X 4). On October 20, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H (Drug Involvement) (Gov. X 1). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the Adjudicative Guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006. Applicant received the SOR on October 26, 2009.

Applicant answered the SOR in writing on November 3, 2009. He admitted the five factual allegations, provided a detailed explanation of his actions to mitigate the security concerns, and elected to have the matter decided on the written record in lieu of a hearing (Gov X 3). Department Counsel submitted the government’s written case on January 13, 2010. Applicant received a complete file of relevant material (FORM) on February 1, 2010, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. He did not provide

additional information. The case was assigned to me on March 22, 2010. Based on a review of the case file, eligibility for access to classified information is denied.

Findings of Fact

Applicant admitted the factual allegations under Guideline H. I carefully reviewed the case file and the pleadings, and make the following findings of fact.

Applicant is a single 26-year-old college graduate employed as an engineer by a defense contractor since September 2008 (Gov. X 4). Applicant noted in response to questions concerning drug use on his e-QIP that he used marijuana in December 2008. He admitted he used marijuana from September 2003 until June 2007. He noted he used cocaine on two occasions in March 2006, and mushrooms on one occasion in May 2004. He stated on the application that he was a straight A student in elementary school and high school. He felt inclined to experiment with new experiences. From these experiments, he now knows drugs have no place in his life and he is not a drug user. He suggested he has no desire to use drugs any more (Gov X 4 at 40-41).

Applicant was requested by security investigators to clarify his statements on the security clearance application concerning drug use. In an undated addendum to his e-QIP, he noted that from September 2008 until January 2009, he used marijuana with friends on four occasions. On three of the occasions, he took one puff of a marijuana cigarette that was being passed around. On the fourth occasion in October 2008, he purchased marijuana to use socially one evening. He used marijuana while socializing as a result of peer pressure. Applicant admits taking one or two vicodin tablets not prescribed by a physician in November 2003 and July 2008. He also admitted using marijuana while in high school on a number of occasions from March 2002 until September 2003 (Gov. X 5).

Applicant was interviewed by security investigators on April 7, 2009. In response to their questions, he admitted using marijuana with friends on a number of occasions while in high school from March 2002 until September 2003. He took one to three puffs of the marijuana cigarettes being passed around to fit in with his high school friends. Applicant admitted to investigators that he used marijuana by smoking it on about ten occasions while in college from September 2003 until June 2007. He would only take one or two puffs of the marijuana cigarette. Applicant admitted that he used marijuana from September 2008 until January 2009 with friends. He admitted purchasing a small amount of marijuana for his and his girlfriend's personal use in October 2008. He admitted to taking two vicodin pills, a prescription drug not prescribed for him, at a college party in November 2003. He also admitted to taking two vicodin pills while hiking in July 2008. Applicant admitted using cocaine on two occasions while in college in March 2006. He did not feel pressure from his friends to use cocaine. He also admitted using mushrooms while in college with friends in May 2004. The mushrooms were crushed and mixed with orange juice (Gov. X 6).

In his response to the SOR, Applicant stated the vast majority of his drug use was when he was a college student as a result of peer pressure in a social setting. He

thought declining drugs when offered had a negative effect on his social image. He never used drugs on a regular basis. The time between his using drugs varied, up to a few months apart. He was unaware the impact drug use might have on his ability to obtain a security clearance. He now has a good solid reason - his work and a potential security clearance - to decline drugs when offered. He has matured and does not have a feeling of not fitting in or of peer pressure. He has not had a desire or used drugs since January 2009. He avoids the environment and places where drugs are used. He executed a statement that he will not use drugs while holding a security clearance (Gov. X 3).

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the Administrative Guidelines. 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 over-arching 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified

information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline H, Drug Involvement

The 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. Drugs are mood and behavior altering substances, and include those listed in the Controlled Substances Act of 1970. Marijuana, cocaine, and mushrooms are listed as illegal drugs. The use of a prescription drug not prescribed for the individual by a physician is the misuse of that drugs. Drug abuse is the illegal use of a drug or the use of a legal drug in a manner that deviates from approved medical direction (AG ¶ 24).

Applicant admitted to using marijuana in high school in 2002 and 2003. He admitted using marijuana, cocaine, and mushrooms while in college from September 2003 until June 2007, and after graduation from college until January 2009. He admitted purchasing marijuana, and using a prescription drug not prescribed for his use while in college. His use of illegal drugs and misuse of a prescription drug raises Drug Involvement Disqualifying Conditions (DI DC) AG ¶ 25(a) (any drug use); and DI DC AG ¶ 25(c) (illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution).

I have considered the Drug Involvement Mitigating Conditions (DI MC) and find none apply. Applicant admitted using marijuana from March 2002 until January 2009. He admitted using cocaine in March 2006. Even though he states he stopped using marijuana in January 2009 and cocaine in 2006, his use is recent when compared to his over eight years of drug use. His use of marijuana over ten times until January 2009 is recent and frequent use. DI MC AG ¶ 26(a) (the behavior happened so long ago, was so infrequent, or happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment) does not apply.

Applicant has a long history of drug use starting when he was in high school. He states that he has not used marijuana since January 2009, and cocaine since March 2006. His last reported abuse of a prescription drug was in July 2008. He used mushrooms only one time in May 2004. He states he does not intend to use or abuse drugs in the future. He also executed a statement that he will not use drugs while holding a security clearance. His statement alone is not a clear intent to stop using or abusing drugs when compared with his long use of drugs starting in high school. He has not established, beyond his self-serving statements, any changed circumstances to indicate his intent not to use illegal drugs in the future. In addition, this stated intent is very recent, in response to the SOR, and in furtherance of his desire to be granted a security clearance. DI MC AG ¶ 26(b) (a demonstrated intent not to abuse 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) does not apply. Applicant has not presented sufficient information to overcome the security concern for his use of illegal drugs. Guideline H is decided against Applicant

Whole-Person Analysis

Under the whole-person concept, the administrative judge evaluates the applicant's conduct and all of the circumstances. An 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant has not established that he is trustworthy, reliable, and exercises good judgment. To the contrary, he used marijuana frequently over an extended period of time. His last use was just over a year ago in January 2009. He also used cocaine, mushrooms, and abused a prescription drug while a college student. He used the drugs to "fit in" with his friends and as a result of peer pressure. While he may now be older and more mature, he has not presented sufficient information to establish that he will not again succumb to the peer pressure and the desire to "fit in." Even though he stated he does not intend to use illegal drugs in the future, he did not present any information to support his intent. He provided no evidence to convince me he should be trusted with access to classified information. The record evidence leaves me with questions about Applicant's eligibility and suitability for a security clearance. For all these reasons, Applicant has not mitigated drug involvement conduct security concerns.

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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.e:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge