



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-04235
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

July 6, 2010

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant completed a security clearance application (SCA) on April 21, 2009, which was re-signed on October 16, 2009. On January 19, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline H (Drug Involvement). 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).

In a January 22, 2010, response, Applicant admitted the two allegations set forth in the SOR and requested a hearing. DOHA assigned the case to me on March 7, 2010. The parties proposed a hearing date of May 4, 2010. A notice setting that date for the hearing was issued on April 13, 2010. I convened the hearing as scheduled. Applicant gave testimony, introduced one witness, and presented six documents. The documents were accepted into evidence without objection as exhibits (Exs.) A-F. Department Counsel offered two documents, which were admitted as exhibits (Exs.) 1-2 without objection. The transcript (Tr.) of the proceeding was received on May 11, 2010, and the record was closed. Based on a full review of the testimony, submissions, and

exhibits, I find Applicant met his burden of mitigating security concerns related to the guideline raised. Clearance granted.

Findings of Fact

Applicant is a 26-year-old software engineer working for a defense contractor. He has worked for his present employer for approximately 14 months. Applicant has a bachelor's degree in computer science. He is single and has no children.

Applicant had never used illegal drugs until after an "ugly breakup" during his senior year of college. With his youthful romance at an end, he succumbed to trying marijuana offered by some friends in September 2006.¹ He eventually began using marijuana socially, about once a week with his roommate.² Usually, Applicant's roommate purchased the marijuana and Applicant would give him some money toward the purchase.³ When he started dating his current girlfriend toward the end of 2006, the couple tried marijuana together. After trying it a couple of times, however, his girlfriend decided she did not like it. She has not used any illegal drugs since that time.

After graduation in 2007, Applicant continued using marijuana, although his use became less frequent.⁴ He moved out of the apartment he shared with his college roommate in the autumn of 2008, triggering a marked decline in his already diminishing marijuana use.⁵ He then moved in with his parents. In early 2009, he left his first post-graduate job. While searching for a new job in late January and February 2009, Applicant quit using marijuana. He did so for a number of reasons. First, he realized it was time to lead a mature and professional lifestyle. Second, his girlfriend disapproved of drugs. Third, he witnessed his former roommate increase his own marijuana use to the point that he became so depressed and dependent that he was no longer "socially operable."⁶ Fourth, Applicant did not want drug use to similarly jeopardize his own future. He views his decision to quit marijuana as "a lifestyle change," and he has "no desire to ever use it again."⁷

Although he never felt addicted to the drug, Applicant made changes in his life to promote a healthy, drug-free lifestyle. In October 2009, he moved in with his girlfriend, who will not tolerate drugs in her home and who has not seen any evidence that

¹ Tr. 12.

² Tr. 13-14. Applicant and his college roommate now live in different cities. At most, they exchange the occasional on-line note.

³ Tr. 14. Applicant has no friends who are drug dealers and he was never involved in a drug sale.

⁴ Tr. 17.

⁵ Tr. 26. As noted by the Government, Applicant's roommate "was really the hub for [Applicant's] drug involvement." Tr. 27.

⁶ Tr. 16, 29. Consequently, Applicant did not want to fall prey to the drug in a similar manner.

⁷ Tr. 16-17.

Applicant currently uses drugs.⁸ She states that since he quit using marijuana and concentrated on a healthy lifestyle that Applicant has “shown a greater degree of responsibility” and focus.⁹ Applicant has kept his contact with his former roommate to a minimum and discontinued relationships with his roommate’s friends. He does not associate with those who use illegal drugs.¹⁰ Instead of lounging at home as before, he now devotes his spare time to rigorous physical activities, such as kayaking, running, swimming, working out with a personal trainer, and playing various sports. Applicant participates in these activities with a friend and mentor who is in the U.S. Army Reserve.¹¹ Applicant follows a disciplined diet, concentrating on only consuming things that have a positive impact on his body.¹² He has “never been more confident about [himself], and that really helps [him] keep away from . . . losers. . . .”¹³ Today, he finds it hard to believe he ever felt the need to use marijuana.¹⁴

Applicant also devotes his time and energy to the job he started in April 2009, which he “loves” and where he is a valued employee.¹⁵ At work, he has received impressive performance reviews.¹⁶ He recently received a 9% pay raise. Applicant has earned the trust and confidence of his supervisor. He has been active in his company’s volunteer activities within the local community. Applicant understands how incompatible marijuana is to the mature life he now leads.

In completing his SCA, Applicant fully disclosed his past marijuana use, providing the foundation for the SOR allegations at issue.¹⁷ He expresses credible contrition over his past illegal marijuana use.¹⁸ Applicant has signed a statement of intent not to use illegal drugs in the future that includes a clause providing for the automatic revocation of any security clearance he might be granted should he use any

⁸ Tr. 33, 36. Applicant’s girlfriend conceded that should Applicant ever return to drugs, that return would be a genuine “issue” testing their relationship.

⁹ Tr. 35. Applicant’s girlfriend also notes that Applicant does not associate with those using drugs. Tr. 37. She believes Applicant’s current lifestyle “is a permanent change for him in terms of growing up and being an adult.” Tr. 35-36.

¹⁰ Tr. 28. Applicant admits he attended a Halloween party in 2009 where marijuana was used, but notes that he “stayed away from it.”

¹¹ Tr. 30.

¹² *Id.*

¹³ Tr. 19.

¹⁴ Tr. 38.

¹⁵ *Id.*

¹⁶ Tr. 19-21; Exs. B-C.

¹⁷ *See, e.g.*, Ex. 1; Tr. 37.

¹⁸ *See, e.g.*, Tr. 38-39.

illegal drug or drugs in the future.¹⁹ He offered into evidence the results of a urinalysis that show he is not presently using marijuana.²⁰

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ²¹ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.²²

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

¹⁹ Ex. F (Statement of Intent, dated May 4, 2010).

²⁰ Tr. 20; Ex. D.

²¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

²² ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²³ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁴

Based upon consideration of the evidence, Guideline H (Drug Involvement) is the most pertinent to this case. Conditions pertaining to this AG that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

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.²⁵ “Drugs” are defined as mood and behavior altering substances, and include drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended, (*e.g.*, marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens) and inhalants and other substances.²⁶ “Drug abuse” is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.²⁷

Applicant admitted he used marijuana from about September 2006 until he quit in about February 2009. During that time, he contributed toward the purchase of the substance. Consequently, Drug Involvement Disqualifying Condition AG ¶ 25 (a) (any drug abuse) and AG ¶ 25 (c) (illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia) apply.

Applicant admits that he used marijuana for about two and a half years, starting in about September 2006. He started using the substance during his senior year in college, after a romance soured and his roommate influenced him to use the drug with him. By the time he moved out of the apartment he shared with his roommate in the autumn of 2008, he had already decreased his drug use which, up to that point,

²³ *Id.*

²⁴ *Id.*

²⁵ AG ¶ 24.

²⁶ *Id.* at ¶ 24(a)(1-2).

²⁷ *Id.* at ¶ 24(b).

consisted of using marijuana about once a week. By February 2009, Applicant had quit using marijuana. His decision to cease using marijuana was based in part on his roommate's personal decline due to marijuana abuse and also on his girlfriend's firm disapproval of drugs.

Applicant's ultimate decision to quit using marijuana, however, was the result of genuine maturation. Set on behaving like an adult in a professional environment, he realized drugs were totally incompatible with the lifestyle he wished to lead. Drug free for nearly 17 months after 28 months of marijuana abuse, Applicant has demonstrated his resolve to eschew drugs. He now lives with his girlfriend, who will not permit drugs in their home. Applicant no longer associates with those who use drugs and avoids people using them in public or social settings. His contact with his former roommate is limited to occasional internet messages. He concentrates on physical activity, diet, and exercise during his free time. As a result, he is now fit and positive in his outlook. At work, he has excelled in his field. He can no longer conceive of a life under the influence of drugs and is committed to his new drug-free life. A urinalysis confirms that he is currently free of marijuana, and he has signed a statement of intent with automatic revocation of any security clearance granted should he again abuse drugs. Based on these facts, Drug Involvement Mitigating Condition 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 current reliability, trustworthiness, or good judgment), as well as AG ¶ 26 (b)(1) (disassociation from drug-using associates and contacts) (2) (changing or avoiding the environment where drugs were used), (3) (an appropriate period of abstinence), and (4) (a signed statement of intent with automatic revocation of clearance for any violation) apply. Consequently, drug involvement security concerns are mitigated.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the “whole-person” factors. Applicant is a highly credible, mature, and direct young man. He is intelligent, well-educated, and successful. When completing his SCA, he honestly disclosed his past marijuana use, which occurred between his senior year of college in the autumn of 2006 until the beginning of 2009. During the hearing, he cogently articulated how he matured between 2008 and early 2009. He also credibly depicted his decision to quit using marijuana. His girlfriend, who was both credible and obviously against the use of drugs, corroborated Applicant’s testimony.

Witnessing his roommate’s decline over the abuse of drugs, Applicant learned first hand how incompatible marijuana was with the adult lifestyle to which he aspired, and how it could jeopardize both his relationship and his future. In quitting marijuana, he refocused on personal responsibility and physical health. His maturation and lifestyle transition have brought him personal and professional satisfaction. Although nearly 17 months of abstinence may seem brief, it is a significant period in the life of a 26 year old. This is especially true given Applicant’s consistent candor, his age at the time, his ease at quitting the marijuana, the fact that his drug use was limited to a 28 month span of time, and the fact that his marijuana abuse began to wane shortly after college graduation.

Applicant demonstrated that he is currently drug free through urinalysis and credible testimony. He has genuinely and contritely apologized for his past drug use and contributions toward its purchase. He has no intent to use or purchase marijuana or any illegal drugs in the future. He signed a statement of intent with automatic revocation of any security clearance granted should he ever abuse drugs again. Given Applicant’s maturity and to his current lifestyle, it seems highly unlikely that he will ever again abuse illegal drugs. Drug involvement security concerns are mitigated. Clearance granted.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant

Conclusion

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

ARTHUR E. MARSHALL, JR.
Administrative Judge