



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
)
-----)
SSN: -----) ISCR Case No. 09-04743
)
)
Applicant for Security Clearance)

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro se*

July 26, 2010

Decision

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s request for eligibility for a security clearance is granted.

On March 6, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his job with a defense contractor. After reviewing the results of Applicant’s background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) sent interrogatories to Applicant to clarify or augment information in his background.¹ After reviewing the results of the background investigation and Applicant’s responses to the interrogatories, DOHA adjudicators were unable to make a preliminary affirmative

¹ Authorized by DoD Directive 5220.6, Section E3.1.2.2.

finding² that it is clearly consistent with the national interest to continue Applicant's access to classified information. On January 8, 2010, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guidelines (AG)³ under Guideline H (drug involvement).

On February 9, 2010, Applicant responded to the SOR through a notarized statement and requested a decision without a hearing. On March 23, 2010, Department Counsel prepared a File of Relevant Material (FORM)⁴ in support of the Government's preliminary decision. Applicant received the FORM on April 9, 2010, and was given 30 days to file a response to the FORM. He did not respond to the FORM. The case was assigned to me on July 8, 2010.

Findings of Fact

The Government alleged that Applicant used marijuana between 2001 and December 2008 (SOR 1.a); that he purchased marijuana (SOR 1.b); that he used cocaine in 2006 (SOR 1.c); and that he used crystal meth⁵ in 2007 (SOR 1.d). Applicant admitted each of the SOR allegations. As part of his response to the SOR, he stated in a notarized letter that he regrets his drug use, that he has not used rugs for over one year, and that he will not use illegal drugs in the future. His drug use started around age 17 when he used marijuana. He used that drug about 12 times between 2001 and 2008. He also used cocaine once in 2006 and crystal meth once in 2007. Applicant further averred that he consumed very little of either drug on those occasions. His marijuana purchase consisted of a single \$50 purchase of a small amount of marijuana from a high school classmate in 2003. Finally, Applicant does not associate with anyone who uses drugs, particularly since he has graduated from college. He also submitted a notarized statement of intent not to use drugs with the understanding that his clearance will be immediately revoked if he does so. (FORM, Item 4) In addition to the facts entered in the record through Applicant's admissions, I make the following findings of relevant fact.

Applicant is 26 years old. He is studying for a master's degree in International Relations. He received his bachelor's degree in August 2008. In March 2009, he obtained a job with a government contractor that requires a security clearance. He worked overseas from July 2009 until November 2009 with an interim clearance for work supporting deployed military units. (FORM, Items 4 and 5) Applicant has traveled overseas extensively as part of his undergraduate studies and as a volunteer teacher.

² Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

³ The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, they take precedence over the guidelines listed in Enclosure 2 to the Directive.

⁴ See Directive, Enclosure 3, Section E3.1.7. The FORM included eight documents (Items 1 - 8) proffered in support of the Government's case.

⁵ Crystal methamphetamine is defined by the Department of Justice as "a colorless, odorless form of d-methamphetamine, a powerful and highly addictive synthetic stimulant." See, <http://www.justice.gov/ndic>.

(FORM, Items 5 and 7) In 2007, while living and working in China, he tried what he thought was cocaine with non-English-speaking friends at a bar. He later learned it was actually crystal meth. In his interview with a Government investigator in April 2009, and in response to questions in e-QIP Section 23 (Illegal Drugs), Applicant gave very detailed information about his illegal drug use. In his e-QIP, he characterized his use of crystal meth as accidental and stated that he was “absolutely horrified” about that incident. (FORM, Item 5) In his interview, Applicant used cocaine twice in one evening in 2006. He was at a party with friends and claims the drug had no effect on him. (FORM, Item 7)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines.⁶ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concern and adjudicative factors under AG ¶ 24 (Guideline H - drug involvement).

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁷ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government’s case. Because no one has a “right” to a security clearance, an applicant bears a heavy

⁶ Directive. 6.3.

⁷ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

burden of persuasion.⁸ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the national interest.⁹

Analysis

Drug Involvement

The government presented sufficient information to support all of the factual allegations under Guideline H. (SOR 1.a - 1.d) Applicant began using illegal drugs around 2001 and last used marijuana in December 2008. On at least one occasion when he was in high school, he bought and possessed a small amount of marijuana for his own use. The facts established through the government’s information and through Applicant’s admissions raise a security concern addressed in AG ¶ 24 as follows:

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.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) 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 (2) inhalants and other similar substances;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

More specifically, available information requires application of the disqualifying conditions listed at AG ¶ 25(a) (*any drug abuse (see definition [at AG ¶ 25(a)]*) and AG ¶ 25(c) (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*).

By contrast, available information supports application of the mitigating conditions at AG 26(b) (*a demonstrated intent not to abuse any drugs in the future, such as: (1) dissociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence;(4) a*

⁸ See *Egan*, 484 U.S. at 528, 531.

⁹ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

signed statement of intent with automatic revocation of clearance for any violation). Applicant used illegal drugs a total of 15 times over seven years. More than two times annually is not infrequent, but he did not use drugs between December 2008 and at least March 2010, when the FORM was issued. Further, Applicant has graduated from college and no longer associates with persons with whom he used illegal drugs. His circumstances appear to have changed enough to support his stated intentions to abstain from future drug use. Available information is sufficient to mitigate the security concerns about Applicant's past drug use.

Whole-Person

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guideline H. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant, a 26-year-old government contractor, was forthright and candid about his past drug use. His statements during the investigation and adjudication of his clearance suitability consistently express an understanding of the security significance of his drug use and his remorse for what appear to have been youthful indiscretions. A fair and commonsense assessment of this record shows the security concerns about Applicant's past drug use have been mitigated.

Formal Findings

Formal findings 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.d:	For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest to grant Applicant's request for a security clearance. Eligibility for access to classified information is granted.

MATTHEW E. MALONE
Administrative Judge