



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



In the matter of:)
)
) ISCR Case No. 09-06222
 SSN:)
)
 Applicant for Security Clearance)

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
David F. Hayes, Esquire, Department Counsel
For Applicant: Richard Murray, Esquire

August 31, 2010

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 8 March 2010 the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, Drug Involvement.¹ Applicant timely answered, and requested a hearing. DOHA assigned the case to me 3 May 2010, and I convened a hearing 8 June 2010. DOHA received the transcript (Tr.) 17 June 2010.

Findings of Fact

Applicant admitted the SOR allegations. He is a 24-year-old mechanical engineer employed by a defense contractor since June 2009, the month after he graduated from

¹DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on 1 September 2006.

college. He has not previously held a clearance. He currently lives at home with his mother in the house he grew up in. His father died the day before his graduation.

Applicant used marijuana about 100 times between October 2007 and December 2008, during his last two years in college. He mostly used on weekends in social settings. He also bought marijuana a handful of times. He stopped using marijuana in December 2008 because he realized he would soon be interviewing for jobs and would be entering the business world where drug use is not acceptable.

After graduation in May 2009, Applicant remained in his apartment at school before moving back home permanently. In June 2009, he and his roommates had a party, during which he was passed a marijuana cigarette. He took a hit of marijuana, and immediately realized the terrible mistake he made: that he could jeopardize his post-college life. He has not used marijuana since.

Applicant's current employer, which has a zero-tolerance drug policy, made him a job offer in May 2009, conditioned on his obtaining a clearance (Tr. 56). In late June 2009, he completed his clearance application (GE 1). He disclosed that he had used marijuana one or two times per week in social settings on weekends, from October 2007 to December 2008. He estimated he used marijuana 100 times. He did not disclose his June 2009 use of marijuana until his subject interview in July 2009 (GE 2).

Applicant was apparently not asked why he omitted this June 2009 marijuana use from his clearance application during his subject interview. At hearing (Tr. 33, 45), he stated that he was so focused on other aspects of the application that he overlooked his one-time use in June 2009. This statement is simply unbelievable. To think that an event in early June that caused such a visceral reaction in Applicant that he foreswore further use did not cause a similar visceral reaction when he read the drug question on the application defies common sense. I conclude that applicant deliberately omitted this information from his application.²

There is no record evidence of physiological or psychological impairment as a result of Applicant's marijuana use. Applicant stopped using marijuana in June 2009 because he realized that continued marijuana use was inconsistent with the professional career he hoped for. He has not used since. After college, Applicant moved back home to live with his mother. He no longer associates with any of the college mates he used marijuana with. He does not intend to use marijuana in the future, although he might if it were legalized (GE 2). He states (Tr. 76) that he included in his answer a signed statement of intent with automatic revocation of clearance for any violation. However, the included statement does not meet the requirement of the Directive. While Applicant states that he does not intend to use marijuana in the future, he only acknowledges that he is "aware of the consequences, both legal and social, for

²The Government did not allege this omission as a falsification under Guideline E, Personal Conduct, and I have not considered it as such. I have, however, considered it on the issue of Applicant's credibility and his reputation for honesty and trustworthiness.

using illegal drugs in the future.” This states no more than what he was aware of at all times he was using marijuana. It cannot be read as agreeing to automatic revocation of his clearance if he uses illegal drugs in the future.

Applicant’s facility security officer, his mother, and two work references (AE A, B) all consider him honest and trustworthy and recommend him for his clearance. Each of them is aware that Applicant used marijuana in college. None of them appears to be aware of the full extent of his use in college or his June 2009 use. Indeed, Applicant stated (GE 2, Tr. 50) that his mother was probably not aware of the full extent of his use.

Policies

The adjudicative guidelines (AG) list factors to be considered in evaluating an applicant’s suitability for access to classified information. Administrative judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in AG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline H (Drug Involvement).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, it establishes a valid case against access to classified information. Applicant must then refute, extenuate, or mitigate the Government’s case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their 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 Government.³

Analysis

The Government established a case for disqualification under Guideline H, by demonstrating Applicant’s use and purchase of marijuana between October 2007 and

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

June 2009.⁴ However, Applicant mitigated the security concerns, by demonstrating that the use was under circumstances unlikely to recur,⁵ and further demonstrating intent to not abuse drugs in the future.⁶ While Applicant's use is fairly characterized as "frequent and recent," these terms have less meaning under the adjudicative criteria, where the language "the behavior happened so long ago. . ." [¶ 26.(a)], is used in the disjunctive with language that clearly applies to Applicant. Further, his marijuana use was confined to the college environment. He is no longer in that environment and no longer associates with the people he used marijuana with. Finally, while his abstention from marijuana use since June 2009 might not necessarily constitute an appropriate period of abstinence, given the brief period of marijuana use by Applicant and his change in environment—both physical (returning home) and psychological (career versus school)—I conclude that this abstinence is appropriate [¶ 26.(b)]. While he did not execute the sworn statement of intent, he is aware of the consequences of further illegal drug use. On this record, it is extremely unlikely that Applicant would return to illegal drug use. Accordingly, I resolve Guideline H for Applicant.

This conclusion is consistent with a whole person analysis. However, there are troubling aspects of this case that must be addressed. I did not find Applicant a particularly credible witness. I found his testimony hesitant and evasive. There are inconsistencies between the drug use he reported on his clearance application and what he reported during his subject interview. He deliberately omitted his June 2009 marijuana use from his clearance application, and did not fully disclose the nature and extent of his marijuana use to his mother and his character references. Nevertheless, these concerns are not an independent basis for denying Applicant's clearance, and I am persuaded he intends to remain drug free.

Formal Findings

Paragraph 1. Guideline H: FOR APPLICANT

Subparagraphs a-b: For Applicant

⁴¶ 25 (a) any drug abuse ; (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

⁵¶ 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 [Emphasis supplied];

⁶¶ 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.

Conclusion

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

JOHN GRATTAN METZ, JR
Administrative Judge