



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 09-06313
)
)
Applicant for Security Clearance)

Appearances

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

June 25, 2010

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline H, Drug Involvement. Applicant’s eligibility for a security clearance is granted.

On March 11, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline H. 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 answered the SOR in writing on April 2, 2010, and requested a hearing before an administrative judge. The case was assigned to me on May 11, 2010. DOHA issued a Notice of Hearing on May 19, 2010. I convened the hearing as scheduled on June 10, 2010. The Government offered Exhibits (GE) 1 and 2. Applicant did not object

and they were admitted. Applicant offered Exhibits (AE) A through J, which were admitted. Applicant and three witnesses testified on his behalf. DOHA received the hearing transcript (Tr.) on June 18, 2010.

Findings of Fact

Applicant admitted the allegation in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 41 years old and has been married since July 2009. He has no children. He has worked for a federal contractor since 2008. He earned a bachelor's degree in 1997 and a master's of business degree in 2008. While in college he was recognized as an outstanding senior, was the recipient of two scholarships, and was president of a student association. Applicant was granted an Interim Secret security clearance in April 2009.¹

Applicant serves as a volunteer on the Board of Directors of a condominium association which enforces the rules and regulations of the property. He is also a volunteer consultant to a nonprofit charter school.²

After graduating from high school, Applicant attended community college for two years. He decided he wanted to serve his country so he enlisted in the Marine Corps. He served in the Marine Corps from 1988 to 1993. During his enlistment he applied for and was selected to serve in the elite Marine Security Guard Battalion. The selection process and training requirements are rigorous, both academically and physically, and attrition is high. He served on embassy duty in Portugal and Tanzania. He held a Top Secret security clearance and a Diplomatic passport. He was praised for his performance and received a Meritorious Mast for his professionalism and dedication. His commanding officer noted in a letter of recommendation written at the time of his service: "I would eagerly seek [Applicant's] service where the highest moral and personal character is required."³ He also commented on Applicant's performance as a Marine security guard stating: "[t]he constant daily demand for integrity, loyalty, initiative, and personal appearance were far beyond those of an average Marine sergeant."⁴ Others noted his professionalism, dedication, knowledge, and leadership were above and beyond others.⁵ He earned two Good Conduct Medals and was honorably discharged in the rank of sergeant (E-5).⁶

¹ Tr. 43-44, 48-51, 79.

² Tr. 51-53; AE H.

³ AE B.

⁴ *Id.*

⁵ *Id.*

⁶ Tr. 44-48, 65, 105-107.

Applicant was married on July 4, 2009. In August 2009, he and his wife traveled to several Asian countries, including Country A, for their honeymoon. Applicant had some friends living in Country A and arranged to visit them while there. He first met these friends in the late 1990s. Applicant and his wife met them all one night for dinner. After dinner Applicant's wife was tired and retired to their room. Applicant and the others had some drinks and went to a boxing event. While at the event, a friend offered Applicant some ecstasy. He stated he took it without thinking about his actions. One friend refused it. Applicant credibly testified that as soon as he took the drug, he knew he should not have done so. He knew it was a mistake and knew his wife would be upset. He was also immediately aware that he was required to report his drug use to the government. He immediately felt terrible and regretted his actions. He admitted he has no excuses for his actions, that he let his guard down, and his actions rightfully raised concerns about his judgment that night. He regretted his actions and was remorseful and disappointed in himself.⁷

Applicant describes himself as a person with a healthy lifestyle. He swims four days a week, does yoga, plays golf, and hikes. His diet is healthy and he consumes alcohol moderately. When drugs are prescribed for a recurring back problem he is reluctant to use them.⁸

When Applicant completed his security clearance application (SCA) on March 30, 2009, he disclosed he held two foreign passports because his mother was born in Ireland and his father was born in Switzerland. Applicant was born in the United States. He knew that he would be interviewed at a later date by a government investigator regarding the passports and foreign contacts. After he used the ecstasy in Country A, his intention was to disclose the use to the investigator when he was interviewed. He stated it took longer than he had anticipated to be contacted by the government. He received interrogatories from DOHA and in his response he disclosed his August 2009 drug use. His written disclosure is consistent with his testimony.⁹

Applicant also disclosed his drug use to his wife when he received the interrogatories in October 2009. He explained he did not tell his wife immediately because he did not want to ruin their honeymoon. He described his wife as being very upset and disappointed in him. His wife testified on his behalf and confirmed she was disappointed with Applicant's conduct. She understands he made a mistake and supports him. She is unaware of any other drug use by Applicant. She believes he exhibits the highest level of integrity. She believes that her husband's drug use was an isolated incident and uncharacteristic of him. She also stated that if there was a recurrence of drug use by Applicant she does not know if they would remain married. She described Applicant as extremely honest, caring, thoughtful, and loving. He has a

⁷ Tr. 53-55, 62, 86.

⁸ Tr. 57-59.

⁹ Tr. 51, 57, 73-76, 86.

very supportive network of friends. She stated that although Applicant is a very social person, drugs are not part of his lifestyle. She and her husband are starting a family and she believes he will never repeat his actions. She stated that Applicant has “beaten himself up over this,”¹⁰ and really regrets his action. He is very remorseful.¹¹

Applicant testified and explained:

I knew my wife also had a need to know as well, and I didn’t hold this back for... my first obligation-again, I know my wife does not understand this, when I served in the U.S. Marine Corps, we were, you know, Marine Corps first, and I that (sic) has been drilled into me.

* * *

I was a security guard. We had intelligence threats. We had terrorist threats. It was drilled into us how important transparency, honesty, integrity was, and I hate to say this, and I know my wife would not want to hear this, but in that case, my wife comes second, and my first obligation is to the U.S. government, 100 percent. And again, she said I sound like a robot when I say that. I love my wife dearly, and I did tell her at the same time I was disclosing it to the government.¹²

Applicant has not seen the friends he met with on his honeymoon since August 2009. He occasionally will see information about his friends on Facebook. He has had contact with one friend through “Skype” on his computer in the last couple of months. These friends continue to live overseas.¹³ Applicant admitted he used illegal drugs a couple of times in his past, but never while in the Marine Corps.¹⁴

Applicant’s coworker and friend testified on his behalf. He served in the Navy prior to obtaining his bachelor’s and master’s degree. He is the father of three children and has been married since 1994. He has held a security clearance and worked with classified material since 1994. He has known Applicant for three years and they have worked together on the same team for two years. They see each other once or twice a week. He is aware that Applicant used ecstasy on his honeymoon. He volunteered to testify on behalf of Applicant because he is a valued member of their company and a close personal friend. He believes Applicant made a mistake. He described him as a thoughtful, diligent, and cerebral planner. He is always on time, prepared, and is competent and capable. He has leadership qualities. He considers Applicant’s

¹⁰ Tr. 101.

¹¹ Tr. 63, 81, 85, 96-103.

¹² Tr. 89-90.

¹³ Tr. 76-78.

¹⁴ Tr. 59, 67-71. These matters were not alleged and will not be considered for disqualifying purposes, but may be considered when analyzing the whole-person.

experience as a motivating factor to not repeat his actions. He believes he is deserving of a second chance.¹⁵

Applicant's friend testified on his behalf. He is a graduate of a service academy, spent nine years on active duty, and served as a liaison to the White House. He has held a security clearance since he was at the academy. He presently works for a consulting firm. He has known Applicant for five years. They see each other about twice a month socially. Although he was surprised about Applicant's drug use, he believes this was a minor lapse in judgment. He commented about Applicant self-reporting his drug use and it was indicative of his integrity. He stated:

I know people who have made false claims on security clearance [applications], been less than forthright, and I know that you are a person that, even having made this mistake and how painful this process would be after the fact, you would admit to having done in that fashion, and I thought that it was important for people to know that this was a minor lapse in judgment and not necessarily indicative of your character or your integrity. And I feel strongly about that.¹⁶

The witness believes Applicant is open and candid. He has a genuine respect for him and relies on him as a trusted friend. He believes Applicant can reliably handle classified and sensitive information. He commented that "we are never too old to learn lessons" and Applicant has learned one.¹⁷

I have considered all of the documents Applicant provided. A letter from a Marine, who is now a civilian, who served with him on embassy duty in Tanzania, provided a statement. He has known Applicant since 1991. He commented on the difficulties of embassy duty for young Marines who are far away from home in a strange country and the requirement that they are expected to immediately meet or exceed operational expectations. Applicant demonstrated his confidence in embracing those requirements and proved to be an asset to his detachment. He considered Applicant to be "a person with a high level of integrity that can understand the significant and potential consequences of his actions." He concluded by stating:

In conclusion, I think it is fair to say we all make mistakes in life and I firmly believe everyone deserves a second chance. It think [Applicant] should be judged not by one incident, but rather the strength of his character as evidenced by a lifetime of honorable service, actions, and behavior.¹⁸

¹⁵ Tr. 32-41.

¹⁶ Tr. 23-24.

¹⁷ Tr. 20-31.

¹⁸ AE F.

Applicant signed a “statement of intent.” It stated:

I, [Applicant] hereby confirm that I will not abuse any drug (as defined in Guideline H, Drug Involvement, DoD Directive 5220.6, 02 January 1992) in any manner at any point in the future while holding a security clearance.

I understand that if I were to abuse any drug, my clearance would be automatically revoked.

Finally, should I abuse any drug at any point in the future while holding a security clearance I will voluntarily and immediately notify the U.S. Government that I have violated my statement of intent.¹⁹

Applicant voluntarily, and at his own expense, submitted a sample for drug screening. The sample was screened for ten illegal drugs. Applicant’s drug test result was negative.²⁰ He volunteered to submit to periodic or random drug testing at his own expense. Applicant credibly testified that he will never engage in illegal drug use again.²¹

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are considered 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based

¹⁹ AE I.

²⁰ AE J.

²¹ Tr. 60-63.

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

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).

Analysis

Guideline H, Drug Involvement

AG ¶ 24 expresses the security concern pertaining to drug involvement:

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 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; Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

I have considered the disqualifying conditions under drug involvement AG ¶ 25 and conclude the following have been raised:

(a) any drug abuse; and

(g) any illegal drug use after being granted a security clearance.

Applicant admitted he used ecstasy on one occasion while holding an Interim Secret security clearance. I find all of the above disqualifying conditions apply.

I have considered all of the mitigating conditions under drug involvement AG ¶ 26. The following two are potentially applicable:

(a) the behavior happened so long ago, was so infrequent or happened under circumstances that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(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 are used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant used ecstasy in August 2009. His use was an aberration. He readily recognized his mistake and he voluntarily disclosed his actions. Although it appears he experimented with illegal drugs when he was younger, they were clearly not part of his lifestyle when he used ecstasy on his honeymoon. He immediately recognized his failure and was remorseful for his out-of-character actions. His use of an illegal drug while holding an Interim security clearance is inexcusable. However, it appears that it is a lesson that Applicant will never forget and is very unlikely to recur. He used poor judgment when he acquiesced to accepting the drug. The friends with whom he was with live overseas and his contact is minimal. There is no evidence he associates with drug users. His witnesses and character letters confirm that his conduct was uncharacteristic of the person they view as having an extremely high level of integrity. Applicant signed a statement of intent with automatic revocation should he use illegal drugs in the future. Applicant cannot turn back the clock, but he has done everything he possibly could do to show that he is remorseful, not an illegal drug abuser, and he is worthy of deserving a second chance.

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 relevant 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for 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. I have incorporated my comments under Guideline H in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant went to college for two years before deciding he wanted to serve his country. He enlisted in the Marine Corps and served in the Marine Security Guard Battalion, in difficult and dangerous jobs overseas protecting American Embassies. He was honorably discharged and completed his college education. He received scholarships and was recognized while a student. Applicant pursued a career and has acted responsibly and admirably. He is uniformly considered a man of integrity by those who know him well. However, he made a serious mistake by using ecstasy after he was granted an Interim security clearance. He immediately recognized the seriousness of his mistake and he reported it. His actions post-drug use reflect the character described by those who know him. He took full responsibility for his actions; he reported his actions to DOHA on his interrogatories; he disclosed his actions to his wife and friends; he signed a "statement of intent;" and he participated in a drug test. I have considered the statements from those who know him best. I have also considered that he is a devoted husband and he and his wife intend on having a family. His wife's response that she is not sure they would remain married if he was to use drugs again, reflects the magnitude of the consequences he might face. I considered Applicant's demeanor, his candor, and his credibility. No one, especially Applicant, disputes he made a terrible mistake. However, he did not hide from his mistake, rather he knew immediately that he had to disclose his drug use to the Government, and he voluntarily did so. Self-reporting is an important requirement and shows that despite the consequences, he complied. The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant successfully mitigated the security concerns arising under the Drug Involvement guideline.

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

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. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge