



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 09-06841
)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

April 1, 2011

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Security Clearance Application (SF 86), on May 15, 2009. On September 2, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. 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) promulgated by the President on December 29, 2005, and effective for cases after September 1, 2006.

The Applicant acknowledged receipt of the SOR on September 7, 2010. He answered the SOR in writing on September 20, 2010, and requested an Administrative Determination by an Administrative Judge. Department Counsel issued a File of Relevant Material (FORM) on January 28, 2011. The Applicant did not respond to the FORM. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated September 20, 2010, the Applicant admitted all of the factual allegations of the SOR, with some explanation. He qualified his admission to subparagraph 2.b. averring that he “forgot” about being charged with Possession of Marijuana, when he answered Section 22d on his May 2009 SCA.

Guideline H - Drug Involvement

1.a.-1.d. In an affidavit executed by the Applicant on April 2, 2010, he describes his Drug Involvement in the following terms:

I began using marijuana in cigarette form around the age of 17 or 18 [about 1989]. I usually smoked it with friends . . . either at parties or while riding around with them. I usually purchased it from friends or acquaintances. I never sold or distributed drugs. Marijuana is the only illegal substance I have ever used. I smoked marijuana to relax. It typically made me feel mellow, relaxed and sometimes silly. I had purchased the marijuana the night of my arrest [and charge in 1989] from an acquaintance prior to the party. From high school until I was around 26 years old, I smoked marijuana three to four times per week. I usually smoked about a quarter of an ounce per week. From the age of 26 until the age of 30, I quit smoking marijuana. At the age of 30 I started smoking marijuana again but only once or twice per month. I last smoked marijuana in August or September of 2009. (FORM, Item 7 at page 2.)

In March of 2005, the Appellant tested positive for marijuana. (FORM, Item 7 at page 3.) He also used marijuana subsequent to being granted a security clearance in May of 2009.

Guideline E - Personal Conduct

2.a. The Applicant answered “No” to Section 23a on his May 2009 SCA. The posited question asks if the Applicant “In the last 7 years . . . illegally used any controlled substance” to include “marijuana.” (FORM, Item 4 at page 33; Emphasis in original.) This is a wilful falsification as the 39-year-old Applicant smoked marijuana “once or twice a month,” in the last 7 years prior to him executing his SCA. (FORM, Item 2 at page 4.)

2.b. The Applicant answered “Yes” to Section 22d on his May 2009 SCA. The posited question asks if the Applicant has “ever been charged with . . . any offense(s) related to alcohol or drugs.” (FORM, Item 4 at page 32.) This is a willful falsification as, although the Applicant listed a 1994 Driving Under the Influence of alcohol arrest; he failed to list his 1989 marijuana possession charge, noted above. This is also a wilful falsification, despite the claim of having “forgot” about it.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). 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 Paragraph 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 Paragraph 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 Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph E3.1.15, the Applicant is responsible "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining 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.

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

The security concern relating to the guideline for Drug Involvement is set out in Paragraph 24:

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.

The guideline also notes several conditions that could raise security concerns. Under Subparagraph 25(a), "*any drug abuse*" may be disqualifying. In addition, "*any illegal drug use after being granted a security clearance*" under Subparagraph 25(g) may be disqualifying. Here, the Applicant illegally used marijuana over a period of 20 years from about 1989 until about August or September of 2009. I find no countervailing mitigating conditions that are applicable here, as his usage stopped only about a year and a half ago.

Guideline E - Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in Paragraph 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information.

The guideline notes several conditions that could raise security concerns. Under Subparagraph 16(a), "*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . or similar form . . .*" may be disqualifying. Here, the Applicant falsified his answers to Sections 22 and 23 on his May 2009 SCA. I can find no countervailing Mitigating Condition that is applicable, as there is no showing of "*prompt, good-faith efforts to correct the . . . falsification*" as required by the first mitigating condition.

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 circumstances. Under AG Subparagraph 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.

The Administrative Judge should also consider the nine adjudicative process factors listed at AG Subparagraph 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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. The Applicant has offered nothing further for my consideration in response to the Government's FORM. Thus, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. He was clearly less than candid with the Government as to his long term past drug abuse. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his Drug Involvement and related Personal Conduct.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant

Conclusion

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

Richard A. Cefola
Administrative Judge

