



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



In the matter of:)
)
) ISCR Case No. 09-08299
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

August 18, 2010

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has mitigated the Drug Involvement security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On May 11, 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. The action was taken under Executive Order (EO) 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 for cases after September 1, 2006.

Applicant answered the SOR on May 26, 2010, and requested a hearing before an administrative judge. The case was assigned to me on June 24, 2010. DOHA issued a notice of hearing on July 1, 2010, and the hearing was convened as scheduled on July 28, 2010. The Government offered Exhibits (GE) 1 through 3, which were admitted

without objection. The Applicant offered Exhibits (AE) A through C and testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on August 5, 2010.

Findings of Fact

The Government alleged that Applicant used marijuana, with varying frequency, to include one to two times a week between October 1984 to at least April 2009 (SOR 1.a.); that he has purchased marijuana (SOR 1.b.); that he was cited in 1985 or 1986 with possession on marijuana (SOR 1.c.); that he used methamphetamines from 1984 to 1994 (SOR 1.d.); that he used cocaine from 1985 to 1990 (SOR 1.e.); and that he used psilocybin mushrooms three times during the period 1986 to 1988 (SOR 1.f.). The Applicant admitted each of the SOR allegations.

Applicant is a 41-year-old employee of a defense contractor since November, 2009. Applicant's use of illegal substances began in high school. He knew it was illegal to use drugs, but gave in to peer pressure. He experimented with substances like methamphetamines, cocaine, and mushrooms during the 1980's and early 1990's, but marijuana was his drug of choice. From 2007 to 2009, he used marijuana approximately ten times. He continued using marijuana until April of 2009, even after applying for a security clearance with another defense contractor in October 2008.¹ (GE 1; GE 2; GE 3; Tr. 31-36, 44-46.)

From 2001 to 2009, Applicant's drug use occurred with two friends who were on his baseball team. Applicant no longer associates with either individual. In approximately November 2009, he relocated to another town away from their influence. Further, Applicant has signed a letter of intent not to use drugs in the future. (AE A; Tr. 42-43, 47.)

Applicant's commitment to abstain from illegal substances is directly attributable to his new responsibilities as a father. Applicant has a son, born in May 2005, who was the product of a one night stand. The mother of his child raised his son with another man for a year-and-a-half, until the other man conducted a paternity test and realized the boy was not his son. The mother then contacted Applicant in May of 2007 and informed him he had a son. Applicant requested a paternity test, but immediately stepped into the child's life and provided financial support. A paternity test confirmed that Applicant was the father. In approximately December of 2007, Applicant learned that the mother of his child was addicted to methamphetamines. The mother of his child would disappear for periods of time and not let Applicant see his son. In January of 2008, he began a long court fight to enable him to see his son. Initially, he was granted 20% custody. During the custody battle, both parents were ordered to take drug tests. Applicant passed the tests each time, although the mother failed her second and third tests, screening positive for methamphetamines. In April of 2009, Applicant was granted full custody of his son, in light of the mother's positive drug tests. It is his growing bond with his son, his newfound responsibilities, and his realization, after obtaining full

¹ There is no evidence to suggest Applicant was granted a clearance in 2008 or 2009.

custody of his son, of the effects that the mother's drug use had, which make his promise to abstain from future drug use credible. (AE A; Tr. 22-29, 38-42.)

The effects of Applicant's involvement in his son's life were set out in a letter by his son's maternal grandfather. The grandfather, an M.D., explained, "After visits to his father, [child] demonstrated his acquired social skills, with less frustration, less hitting, and more basic social graces like 'please' and 'thank you' and respect for others." Further, Applicant's management team believes he displays honesty and integrity. (AE C.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines 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 on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant 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 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 EO 10865 provides that adverse 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.

I have considered all of the evidence in this case and the disqualifying conditions under Drug Involvement AG ¶ 25 and especially considered the following:

- (a) any drug abuse; and

- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

The Government presented sufficient information to support all of the factual allegations under Guideline H (SOR 1.a.-1.f.). Applicant began using illegal substances in 1984 and last used marijuana in April 2009. He admits that he sometimes purchased marijuana. The facts established through the Government’s information and through Applicant’s admissions raise a security concern under all of the above disqualifying conditions.

I have considered all of the evidence in this case and the mitigating conditions under Drug Involvement AG ¶ 26 and especially considered the following:

- (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.

Applicant used illegal drugs over a period of 25 years, which is a considerable amount of time. He has only abstained from drug use for a little over a year. Normally, such a short period of abstinence would not be mitigating, given his extended history with drugs. However, in this case Applicant has demonstrated a concrete and substantial change in his life since April 2009. He has signed a statement clearly

indicating that he will not use drugs in the future. His dedication to parenting his son full time is unquestionable. He is sincere in his pledge to not allow drugs to interfere in his care of his son. He has seen the tangible effects that having a mother dependent on illegal substances had on his son, and he is committed to remaining drug free. He has changed their environment by moving away from his former drug-using friends and he no longer associates with them. 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 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 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. Independent of my analysis under Guideline H, I find that Applicant has mitigated the security concerns under the whole-person concept.

Applicant's life has drastically changed in the past 15 months. He has been awarded sole custody of his son and stopped using illegal substances. He has matured since stepping in as the sole caregiver for his son. He now is providing the love and care to his five-year-old child, who had been neglected and negatively influenced by the mother's dependence on illegal substances. Applicant's dedication to his son and his decision to get a fresh start by moving away from any past negative influences, provide genuine motivation to adhere to his promise to continue to abstain from using illegal substances. In addition, Applicant is well respected by his colleagues.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Drug Involvement security concerns.

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 F:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.e.:	For Applicant
Subparagraph 1.f.:	For Applicant

Conclusion

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

Jennifer I. Goldstein
Administrative Judge