



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-08300
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

January 13, 2011

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On April 29, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant. The SOR enumerated security concerns arising under Guideline H (Drug Involvement) and Guideline E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), 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 September 1, 2006.

In his answer to the SOR, dated May 25, 2010, and affirmed on July 27, 2010, Applicant admitted three of the four allegations under Guideline H and effectively admitted with explanation the sole allegation raised under Guideline E. In his answers, Applicant also requested a hearing. Later, by e-mail to Department Counsel dated October 4, 2010, Applicant withdrew his request for a hearing in favor of an administrative determination. Department Counsel submitted a File of Relevant Material (FORM), dated October 13, 2010, and six attached items. Applicant received the FORM on October 20, 2010, but did not respond to the FORM or otherwise submit any

additional information for consideration. The case was assigned to me on December 10, 2010. Based on a review of the case file and exhibits, security clearance is denied.

Findings of Fact

Applicant is a 25-year-old data collection specialist who has worked in a part-time capacity for the same defense contractor since September 2009. He is single and has no children. He has a high school diploma and has been in college since January 2008. Past work experiences include jobs as a bank teller (approximately 2006-2009) and as a fast food franchise shift manager (approximately 2001-2006).

In about May 2001, Applicant began using marijuana. He used the illegal drug (which he identified as THC, representing the chemical compound found in the cannabis plant) a couple of times a week until late July 2009. He used marijuana socially because he enjoyed the feeling it gave him. In addition, he used it to help him sleep and for pain relief related to injuries incurred in a motocross accident. Applicant purchased marijuana on one or more occasions during this period. He eventually quit using the drug when he determined it provided him with no tangible benefit and after he realized it adversely affected his asthma. He also found that drug use was incompatible with his desired lifestyle and future ambitions.

Applicant also used cocaine between 2005 and 2006. During an interview, he reported that he used cocaine "once a week per month for the entire year of 2005" because he was "curious as to the effects" of the drug.¹ In denying allegation ¶ 1.c of the SOR ("You used cocaine with varying frequency, to include weekly, from about July 2001 to at least July 2009"), Applicant wrote that he used cocaine from about June 2005 until June 2006 "a few times."² During his period of cocaine use, Applicant purchased the drug.

During his periods of drug use, Applicant never sold illegal drugs. They never adversely affected his work or studies. His family and various friends knew of his drug use. He never received treatment for his drug use or tested positive for drugs. He has no intent to use drugs again in the future.

In completing his September 4, 2009, electronic security clearance application (SCA), Applicant fully disclosed his past use of marijuana (THC) between 2001 and 2009. He noted the nature of his past marijuana abuse and consistently explained his reasons for quitting marijuana. He failed to note his past cocaine use, explaining that he had forgotten about it until he was later interviewed during this process.

Applicant chose an administrative determination without a hearing. The FORM consists of Department Counsel's memorandum and six attachments, including

¹ FORM Item 6 (Interrogatories) at 3 (Testimony of Nov. 6, 2009). Applicant affirmed the content of his statement on Jan. 26, 2010. See FORM Item 6, noted *supra*, at 5-6.

² FORM Item 4 (Answers to the SOR, dated May 25, 2010, and Jul. 27, 2010, respectively).

Applicant's Answers to the SOR, his 2009 security clearance application, and one set of interrogatories from January 26, 2010. He provided no additional information in response to the FORM.

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 adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." All available, reliable information about the person, past and present, favorable and unfavorable, must be and were considered 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 my decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence submitted. In these proceedings, the Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." ³ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant. ⁴

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 an 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.

³ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁶ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁷ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find Guideline H (Drug Involvement) and Guideline E (Personal Conduct) to be the most pertinent to the case. Conditions pertaining to these adjudicative guidelines that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are discussed below.

Analysis

Guideline H - 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.⁸ “Drugs” are defined as mood and behavior altering substances, and include 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 inhalants and other substances.⁹ “Drug abuse” is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.¹⁰

⁵ *Id.*

⁶ *Id.*

⁷ Executive Order 10865 § 7.

⁸ AG ¶ 24.

⁹ *Id.* at ¶ 24(a)(1-2).

¹⁰ *Id.* at ¶ 24(b).

Applicant admitted he used marijuana and cocaine at various times and with varying frequencies between mid-2001 and about July 2009. Both drugs are controlled substances and their use constitutes drug abuse. He also admitted he purchased those drugs. Such facts are sufficient to raise Drug Involvement Disqualifying Condition AG ¶ 25 (a) (any drug abuse); AG ¶ 25 (g) (any illegal drug use after being granted a security clearance) and AG ¶ 25 (c) (illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia). With disqualifying conditions raised, the burden shifts to Applicant to mitigate related security concerns.

While Applicant quit using cocaine in 2006, he continued using marijuana until about July 2009. His use of that drug was frequent and regular, obviating application of Drug Involvement Mitigating Condition AG ¶ 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).

Applicant wrote that he ceased illegal drug use in about July 2009, almost a year-and-a-half ago. This cessation, however, occurred after nearly eight years of regular marijuana use. He provided adequate reasons for why he quit abusing drugs. Applicant failed, however, to detail any lifestyle changes adopted to support his stated resolve to remain drug-free. He did not submit a signed statement of intent with automatic revocation of clearance for any future drug abuse, nor did he provide any additional information fortifying his statement that he intended to eschew illegal drug use in the future. Based on the limited record evidence, Drug Involvement Mitigating Conditions AG ¶ 26 (b)(1) (disassociation from drug-using associates and contacts), AG ¶ 26 (b)(2) (changing or avoiding the environment where drugs were used), AG ¶ 16 (b) (3) (an appropriate period of abstinence), and AG ¶ 26 (b) (4) (a signed statement of intent with automatic revocation of clearance for any violation) do not apply. No other mitigating conditions are applicable.

Although Applicant's cocaine abuse may be a thing of the past attributable to a youthful and protracted curiosity, his marijuana use and marijuana purchases continued until the middle of 2009. His depiction of his current drug-free life is scant, leaving his stated intention not to use drugs in the future without a firm foundation or context. This is of particular concern given the relative recency of his marijuana cessation. In light of these sustained security concerns, I conclude that drug involvement security concerns are unmitigated.

Guideline E – Personal Conduct

Security concerns arise from matters of personal conduct because “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.¹¹ In addition, "any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process" is of special interest.¹² Here, Applicant fully detailed his past marijuana use on his SCA, but failed to note his briefer and more remote abuse of cocaine in that document. If this omission was intentional, it would be sufficient to raise a Personal Conduct Disqualifying Condition under AG ¶ 16.

In disclosing his past marijuana abuse, Applicant's security clearance application provided a comparatively extensive answer regarding the duration, extent, and subsequent cessation of his marijuana (THC) habit. It did more than provide adequate notice of his past drug use. His electronic SCA answer is the FORM's most direct and comprehensive of source information about his past marijuana use. Applicant wrote that his omission of information regarding past cocaine use was not intentional, writing that he had forgotten about it at the time he completed the electronic questionnaire. In light of the comparatively brief period of cocaine abuse, which was disclosed to investigators after he had fully disclosed his other drug abuse on his SCA, Applicant's explanation is plausible. Indeed, the minor inconsistency in the dates of his past cocaine use ("June 2005 to June 2006" versus "the entire year of 2005"), when viewed in context of all of the FORM information, seems to be more the result of dim recollection than an intentional and concerted effort to falsify or mislead. Absent more persuasive evidence that Applicant intentionally tried to mislead investigators or falsify his SCA answer, I find that none of the available disqualifying conditions apply.¹³

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. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). 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.

¹¹ AG ¶ 15.

¹² *Id.*

¹³ Had a disqualifying condition been found applicable, mitigating conditions AG ¶ 17(c) (the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment) and AG ¶ 17(e) (the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress) would apply to this singular omission in light of his subsequently candid disclosures.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the “whole-person” factors. I note that the information submitted by the Applicant is scant. He is a young man who is currently working part-time while completing his college education. He has worked in positions of increasing responsibility since his early teens. Now 25 years old, he ceased illegal drug use in his early 20s, after he acknowledged ill health effects and decided to comport his behavior in a manner more compatible to his professional aspirations. Although he failed to disclose his comparatively brief use of cocaine when he was 19 and 20, he fully disclosed his past marijuana (THC) abuse when completing his SCA, thus giving investigators sufficient notice of his past drug abuse.

There is insufficient evidence to conclude that Applicant intentionally sought to falsify or mislead in completing his SCA. However, Applicant presented insufficient evidence to mitigate security concerns regarding his past drug abuse. Applicant is now 25 years old and regularly abused drugs for about eight years, but has only been drug-free for about 18 months. He presented scant information regarding his efforts to remain drug-free that would raise any drug involvement mitigating conditions. The burden in these cases is placed squarely on the Applicant. Here, Applicant failed to carry that burden. As noted above, any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. In light of the security concerns remaining unmitigated, clearance is denied.

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
Subparagraphs 1.a-1.d:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

ARTHUR E. MARSHALL, JR.
Administrative Judge