



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 10-00255
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

December 30, 2010

Decision

MASON, Paul J., Administrative Judge:

Because of the frequency and scope of his marijuana use over almost a 13-year period, Applicant has not presented sufficient evidence in mitigation and reform to warrant a finding in his favor under the drug involvement guideline. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his Electronic Questionnaire for Investigations processing (eQIP) (SCA, Item 4) on August 25, 2009. He was interviewed by an investigator from the Office of Personnel Management (OPM) on October 6, 2009. The interview appears in his Interrogatory Answers (Item 5) dated April 15, 2010. Applicant also agreed in Item 5 that the investigator's summary of his October 2009 interview could be used in a security clearance hearing to determine his security suitability.

On June 26, 2010, DOHA issued a Statement of Reasons (SOR) detailing security concerns under drug involvement (Guideline H). The action was taken pursuant to 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) implemented by the Department of Defense on September 1, 2006.

Applicant submitted his notarized answer (Item 3) to the SOR on August 9, 2010. A copy of the Government's File of Relevant Material (FORM, the Government's evidence in support of the allegations of the SOR) was sent to Applicant on September 9, 2010. He received the FORM on September 17, 2010. In an attachment to the FORM, Applicant was advised he could object to the information in the FORM or submit additional information in explanation or extenuation. His response was due on October 19, 2010. No response was received. The case was assigned to me on November 19, 2010.

Findings of Fact

The SOR identifies two allegations under the drug involvement guideline. In his answer, Applicant admitted both allegations and elected to have his case decided on an administrative record. He acknowledged he exercised poor judgment in purchasing and using marijuana. He concluded his answer with his intention not to purchase or use any drug in the future.

Applicant is 32 years old. He is married and has two children, ages seven and one. He has been employed as a logistics coordinator since August 2009. He seeks a secret security clearance.

Applicant was interviewed in October 2009. He was about 16 years old when he first used marijuana in 1994 or 1995 and felt nothing. (Item 5) Six months later he tried marijuana at a party because of peer pressure.

From 1996 to 2002 (ages 18 to 24), Applicant used marijuana about 50 to 75 times. He noted that he never smoked on a regular basis. At times, he would go for several months without smoking. (*Id.*) He lived in a rural area at the time, and smoking marijuana in cars with friends was fun, and it helped fill otherwise idle time. He smoked while his wife was pregnant, but she did not mind because he did not use the drug habitually. (AE 5)

From 2002 to 2004, Applicant used marijuana between 30 and 40 times. Applicant used marijuana in 2002 to help him forget about a death in the family. From 2005 to March 2009, Applicant used marijuana about 20 times. Within the year before March 2009, he used marijuana seven or eight times. He used marijuana to ease the loss of his sister's child in May 2005, and the loss of a friend in October 2005. He did not feel pressure to use marijuana, but because the drug was available, he used it. His last use of marijuana was in March 2009 with friends. He enjoyed using the drug because it was "a social thing to do." (*Id.*) Applicant stopped using marijuana because his job was ending in July 2009, and he would possibly be administered drug tests in

any new job he found. (*Id.*) He was aware that marijuana use while holding a security clearance was grounds for revocation of his clearance, so he was not going to use any drugs in the future.

Applicant paid \$5 for marijuana sometimes, and other times the drug was given to him. He never sold or trafficked in drugs. He was never charged with any drug-related crime. Marijuana has never negatively affected his education, employment or social life. (*Id.*)

Character Evidence

Applicant furnished no information about his employment. He supplied no information about how he maintains his abstinence from drug use.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions that are useful in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on common sense. The decision should also include a careful, thorough evaluation of a number of variables known as the "whole-person concept" that brings together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture. 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 the potential, rather than actual, risk of compromise of classified information.

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 applicant or proven by Department Counsel" The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

Drug Involvement

Paragraph 24 of the AG sets forth the security concern attached 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.

The disqualifying conditions under ¶ 25 that apply are:

AG ¶ 25(a) (*any drug use*); and

AG ¶ 25(c) (*Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*).

Applicant used marijuana from 1996 to March 2009. While his use may not have been habitual, it was more than experimental or sporadic. As a teenager, he initially used the drug because of peer pressure. He used the drug as a young adult because it was a way of creating merriment with friends who lived in a rural area. He used it when coping with a family loss and while his wife was pregnant. Sometimes he purchased the drug, and sometimes friends provided him with the drug. He used the drug because it was the social thing to do and he enjoyed it. Both AG ¶¶ 25(a) and 25(c) are applicable.

The two relevant mitigating conditions under ¶ 26 of the drug involvement guideline are:

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*); and

AG ¶ 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 are used*);

(3) (*an appropriate period of abstinence, and a signed statement of intent with automatic revocation of clearance for any violation*); and

(4) (*a signed statement of intent with automatic revocation of clearance for any violation*).

Even though Applicant claims he never used marijuana habitually, the record indicates he enjoyed using the drug because it was the social thing to do, and he liked the drug. He used the drug with friends. He used the drug to cope with traumatic events and also during his wife's pregnancy. There is nothing unusual about the circumstances

of Applicant's marijuana use that precludes a recurrence of drug use in the future. Given the almost 13-year period of use, particularly in the variety of circumstances he used the drug, stronger evidence in mitigation should be advanced by Applicant to justify complete confidence he will forego all drug use in the future.

Applicant stopped using marijuana in March 2009 because he did not want to produce a positive drug test result in his new employment. The record does not indicate whether he has to take drug tests. There is no evidence that Applicant has severed his ties with his drug-using associates and contacts. The record does not disclose any evidence establishing that Applicant has changed or avoided the environment where drugs are used. With no character evidence or a signed statement of intent from Applicant agreeing to an automatic revocation of his clearance for any violation, AG §§ 26(a) and 26(b) have not been established. Applicant has not provided sufficient mitigating evidence to overcome his 13-year history of purchase and use of marijuana.

Whole-Person Concept

This recommended decision must be an overall commonsense judgment based upon careful consideration of the guidelines and the general factors of the whole-person concept. Those factors include:

- (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 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 have evaluated the facts of this case in conjunction with the disqualifying and mitigating conditions of the AG. I have found against Applicant under the drug involvement guideline. I have also assessed this case under the nine general factors of the whole-person concept.

Applicant began his illegal use of marijuana in about 1996. Generally, a person's teenage marijuana use can be mitigated after he becomes an adult, and decides to stop drug use in the maturation process, and because drug use is against the law. However, Applicant kept using marijuana occasionally until he was 30 years old, or about 10 years after becoming an adult. Judging by the totality of the circumstances, a long record of drug use warrants a significant record of abstinence coupled with a shift in the surrounding circumstances that facilitates the past drug purchase and use. I am not convinced the change has taken place. Accordingly, Applicant has not met his ultimate burden of persuasion in showing that he is eligible for a security clearance.

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

Conclusion

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

Paul J. Mason
Administrative Judge