



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



In the matter of:)
)
) ISCR Case No. 10-00311
)
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro se*

August 26, 2010

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline H, Drug Involvement. Applicant’s eligibility for a security clearance is denied.

On April 26, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing 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 an undated response and requested a hearing before an administrative judge. The case was assigned to me on July 2, 2010. DOHA issued a Notice of Hearing on July 15, 2010. I convened the hearing as scheduled on August 9, 2010. The Government offered Exhibits (GE) 1 and 2. Applicant did not object

and they were admitted. Applicant testified on his own behalf and did not have any documentary evidence. DOHA received the hearing transcript (Tr.) on August 13, 2010.

Findings of Fact

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

Applicant is 45 years old. He graduated from college in 1989. He married in 1993 and divorced in 2005. He has three children, ages 10, 12, and 14. He began employment with his current employer, as an operations manager, in January 2008. He was promoted to project manager in January 2009.¹

On August 19, 2009, Applicant completed a security clearance application (SCA). He indicated that he occasionally used marijuana from March 1989 to the present.² During his background interview with an Office of Personnel Management (OPM) investigator, he indicated that he used marijuana an average of 5 to 10 times per year, from February 1988 to July 2009. There were certain years when he did not use marijuana at all. He first used marijuana in college. He would usually smoke one or two hits off of a water pipe. He never purchased marijuana, but rather it was provided to him by an acquaintance or his ex-girlfriend. He used it at parties in college.³

After completing college, Applicant used marijuana while playing golf, boating, or at home. Applicant refused to provide the names to the investigator of the people he used marijuana with because he did not want to put them in a situation where they would have to lie for him. After being advised that his failure to provide information regarding knowledgeable sources with whom he used marijuana may affect the outcome of his investigation, he indicated he understood this and still refused to provide the information. Applicant indicated to the investigator that he did not intend to use marijuana in the future because he now had a job that required him to have a security clearance, he did not want to jeopardize his employment, and he believed he was getting too old to smoke marijuana. He also indicated that as of July 2009, he no longer associated with the acquaintances that he used marijuana with in the past. He indicated in his interview that his brother was aware of his marijuana use, but his ex-wife was unaware of it. He explained he used marijuana to escape from stress and to relax. It caused him to have slower motor skills, but he did not think his judgment was impaired. He indicated that over the 20 years he used marijuana there would be years when he did not use it at all. He has not attended any counseling or treatment as a result of his drug use.⁴

¹ Tr. 23, 26, 50.

² GE 1.

³ Tr. 17, 33.

⁴ Tr. 17-21, 25-32; 35, 38-45, 51-53; GE 2.

At his hearing, Applicant indicated that in the past two weeks he told his ex-wife about his drug use. He also explained that his brother has problems with substance abuse and has been in and out of rehabilitation. The last program his brother was in was six months ago. Applicant never used marijuana around his children. He is aware that marijuana possession and use is illegal. His last use was shortly before he completed his SCA in approximately July 2009. His employer does not conduct drug screening tests. He believes he is capable of refraining from marijuana use. When he smoked marijuana at home, it would be when his wife and children were not present and he was playing pool with his friends. His children do not know about his drug use.⁵

The friends Applicant used marijuana with were from high school. When he and the friends played golf is when they used marijuana. He stated that he no longer maintains contact with these friends. He stated he was completely honest when responding to the drug questions on his SCA. Applicant does not intend to use marijuana in the future. He believes he is a good person and is loyal to the United States. He is not proud of his actions and acknowledges he made mistakes in his past when he used marijuana.⁶

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, 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 on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

⁵ Tr. 29-30, 33-38, 50-55.

⁶ Tr. 21-22, 38-44, 51, 57.

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 especially considerer the following:

(a) any drug abuse, and

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

Applicant used marijuana approximately five to ten times a year, from approximately 1989 to July 2009. I find these disqualifying conditions apply.

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

(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 has a 20-year history of marijuana use. He used it with varying frequency. He did not necessarily use it every year, but then some years he would use it more than others. He understood its possession and use were illegal. He made a decision to stop using marijuana shortly before he submitted his SCA. He understood the need to refrain from drug use if he was to obtain a security clearance, and he decided he was getting too old to use marijuana. Applicant claims he no longer associates with the friends he used marijuana with. Applicant's long history of drug use was well past the age of youthful indiscretion, but rather continued while he was married, after he became a father, and since accepting employment with his present employer. He professes he does not intend to use illegal drugs in the future. However, his commitment has only been since August 2009. His claim that he no longer associates with his friends who use drugs is a responsible attitude, but at this juncture it is too soon to conclude that these friendships are in his past. Applicant's long history of drug use outweighs his short abstention period. I find Applicant has not met his burden of persuasion and the above mitigating conditions do not apply.

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):

(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. Applicant is 45 years old and has worked for his employer since 2008. He is a divorced father of three children. He has a 20-year history of smoking marijuana. He last smoked it in July 2009. He would use marijuana with his friends when playing golf, going boating, or at his home, when his family was not present. He decided to abstain because he understood the impact his marijuana use would have on obtaining a security clearance and he also felt he was getting too old. Using marijuana for 20 years and well into his 40s raises concerns about Applicant's judgment. At this juncture, considering the lengthy period of time Applicant used marijuana and his recent commitment to abstention, it is too early to conclude that it is a thing of the past. He has not offered any evidence that he has attended drug counseling or other rehabilitation to mitigate the security concerns. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the guideline for Drug Involvement.

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:	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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge