



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



In the matter of:)
)
) ISCR Case No. 10-00942
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

February 16, 2012

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline H, Drug Involvement. Applicant’s eligibility for a security clearance is granted.

On July 26, 2011, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the 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 writing on August 2, 2011. He originally requested his case be determined on the record. Department Counsel requested a hearing and Applicant changed his mind and concurred in having hearing before an administrative judge. The case was assigned to another administrative judge on November 22, 2011, and it was reassigned to me on December 7, 2011. DOHA issued

a Notice of Hearing on December 15, 2011. I convened the hearing as scheduled on January 25, 2012. The Government offered Exhibits (GE) 1 through 3. Applicant did not object, and they were admitted. Applicant testified and did not offer any exhibits. DOHA received the hearing transcript (Tr.) on February 2, 2012.

Findings of Fact

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

Applicant is 29 years old. He graduated from high school and attended a technical school. He is not married and has no children. He enlisted in the Navy, but was discharged with an entry level separation. Applicant has worked for a federal contractor since July 2009.¹

Applicant began using illegal drugs when he was 17 years old and in high school. He admitted that from September 1999 to July 2003 he used cocaine every weekend. In March 2000, he began using cocaine daily and increased his usage to three to four times a day. He purchased cocaine once a week from 2001 to 2003. He used marijuana daily from September 1999 to September 2006. He purchased marijuana once weekly from September 1999 to September 2006. In 2006, Applicant stopped using all illegal drugs.²

After technical school, Applicant had several jobs and a few periods of unemployment. He was living at home. He used money earned from his jobs to buy illegal drugs. He and his friends would pool their money to purchase drugs. He did not commit other illegal acts, such as stealing, to get money to purchase drugs. He did not believe that his drug use impacted his work. He and his friends would purchase drugs through acquaintances. They purchased their drugs through different dealers.³

In March 2003, Applicant and his friends did not have enough money to purchase drugs. They were deciding what items they owned they would pawn to get money for drugs. It was at that point, Applicant decided to stop using cocaine. He stated he was using cocaine to help him stay awake during the day. He did not believe he was chemically dependent.⁴

Applicant stopped using marijuana in September 2006. He stated it was his birthday and he was working a construction job that offered no benefits or retirement program. He was 24 years old, and he wanted to pursue a career. He knew he had to

¹ Tr. 23-24.

² Tr. 24, 29.

³ Tr. 25-27, 29-30.

⁴ Tr. 30-33.

get some training. He wanted to get a government job and knew he could not use illegal drugs. He admitted that his circle of friends continued to use illegal drugs. When he began his federal contract job in July 2009, he had to submit to a drug test, which he passed, but he has not participated in any other drug tests since then.⁵

Applicant's mother's house was being renovated in October 2010, and he needed a place to live for a couple of weeks. He lived with two friends who are drug users. They did not use drugs in his presence. While staying at his friend's house, a third friend visited, and his friends used drugs together. He did not use drugs with them. Applicant has recently moved to a new town and returns to his home town about once a month for a few hours to visit his mother. His last contact with these friends was in December 2011, when he saw one of them at a store.⁶

Applicant does not intentionally return to his home town to visit the friends that he previously used drugs with. Many of his high school and post-high school friends he has not seen in years. However, he retains some of their telephone numbers. Because his home town is so small, it is difficult not to occasionally see the friends he used drugs with. He credibly stated that he would help his friends if they needed it, but he does not spend time with them because of his career. He credibly stated that he would not help them with money to buy drugs or anything drug-related. He understands he cannot associate with drug users. He has not spent time with these friends since he moved to a new town. He recognizes that having contact with his old friends could jeopardize his career.⁷

Applicant has shared a house with a coworker since October 2011. His coworker knows of Applicant's drug history. His coworker also has a drug history and was arrested ten years ago for possession of methamphetamine. Applicant does not know the disposition of the case. His coworker has a security clearance.⁸

Applicant has not participated in a drug rehabilitation program. He has never been arrested for his illegal actions. He does not believe he was ever drug dependent. He stated he never sold drugs, even to his friends.⁹

Applicant's parents are divorced and he lived with his mother. His mother and father do not know of his past drug use. He knows his mother would be disappointed if

⁵ Tr. 33-37.

⁶ Tr. 37-38, 42-53.

⁷ Tr. 22, 41-53, 58-59.

⁸ Tr. 37-40.

⁹ Tr. 53-55.

she knew of his drug use. Some of his coworkers know of his past drug use. Applicant credibly stated that he does not intend to use illegal drugs in the future.¹⁰

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 considered 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.

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 protect 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

¹⁰ Tr. 27, 54-56, 59-60.

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 conclude the following have been raised:

(a) any drug abuse; and

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

Applicant used cocaine from 1999 to July 2003. He purchased cocaine once a week from 2001 to 2003. He used marijuana daily from 1999 to 2006. He purchased marijuana once a week from 1999 to 2006. He remains friends with those he previously used drugs with. I find the above disqualifying conditions apply.

I have considered all of the mitigating conditions under drug involvement AG ¶ 26. The following three are potentially applicable:

(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 credibly testified that he has abstained from all illegal drug use since September 2006, a period of almost six years. He made a mature decision that if he wanted a real career and a good job he could not use drugs. He has friends who continue to use illegal drugs. Applicant moved out of his small home town and has limited contact with these friends. He returns to his home town to visit his mother and may occasionally see the friends, but not intentionally. He still considers them friends, and if they needed legitimate help he would help them. He understands that he cannot be around them if they use drugs. Applicant does not intend to use illegal drugs in the future. I have observed and considered Applicant's demeanor, candor, and credibility. I believe his drug use is in the past, and he is committed to abstaining from drug use in the future. I find AG ¶¶ 26(a) and 26(b) 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 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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant is 29 years old. He has a history of cocaine and marijuana use. His past use at certain times was frequent. He changed his behavior in 2006 when he realized he wanted more from his life and wanted to have a real career. He stopped using illegal drugs and has abstained since then. Applicant moved away from his small town, returning occasionally to visit his mother. Applicant did not hide his past or attempt to minimize it. He understood the mistakes he made. He genuinely wants to do better. Applicant's past drug use was extensive as were his criminal acts of purchasing drugs for himself. I

believe Applicant is committed to not using drugs again and although he still may occasionally see a friend when he returns home, he is not actively socializing with them. He understands the risks he may encounter if he socializes with them. I do not believe Applicant is a security risk. The record evidence leaves me no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the Drug Involvement guideline.

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: FOR APPLICANT

Subparagraphs 1.a-1.f: For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge