



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



In the matter of:)	
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-----, -----)	ISCR Case No. 10-02826
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Applicant for Security Clearance)	

Appearances

For Government: Candace L. Garcia, Esquire
For Applicant: *Pro se*

May 31, 2011

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the security concern stemming from his marijuana use. Clearance is denied.

Statement of the Case

On September 27, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its denial of Applicant’s request for a security clearance under Guideline H, drug involvement. 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 revised adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on October 13, 2010, and requested a decision on the record rather than a hearing. On December 22, 2010, Department Counsel prepared

a File of Relevant Material (FORM) setting forth its argument against the granting of Applicant's security clearance. Applicant received the FORM on January 6, 2011, and was given 30 days to file a response. Applicant did not file a response and the case was assigned to me on February 23, 2011. Upon reviewing the FORM, I conclude that Applicant failed to mitigate the security concern.

Findings of Fact

Applicant is a 54-year-old married man with two teenage children. He earned a bachelor's degree in 1979, and two master's degrees in 1983 and 2001, respectively. The fields of study are unknown from the record.

Applicant, an accountant, works for a company that provides military components for all levels of the DOD. (Item 2 at 3) He was recently promoted to the position of controller of the company's accounting and finance department. (*Id.*) He has worked at the same company for 14 years.

Since graduating from college 30 years ago, Applicant has periodically smoked marijuana. (Item 4 at 45) Typically, his usage occurs "at college reunions or parties related to college friends." (*Id.*) He has smoked it approximately 10 times in the past 15 to 20 years. (Item 6 at 2) Over the years, his use decreased as his family responsibilities increased. His last use was in October 2009. Applicant provided a signed statement memorializing his intent not to use marijuana again in the future. (Item 5 at 7)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the potentially disqualifying and mitigating conditions listed in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. 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."

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 as to obtaining a favorable security decision.

Analysis

Guideline H, Drug Involvement

Under this guideline, “use of an illegal 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” (AG ¶ 24). Applicant’s marijuana use triggers the application of AG ¶ 25(a), “any drug abuse.”

The following mitigating conditions under AG ¶ 26 are potentially applicable:

(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;

(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, and

(d) satisfactory completion of a prescribed drug treatment program, including, but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Although Applicant’s use of marijuana was infrequent, it is not immaterial, as Applicant characterized it in his Answer. Marijuana is illegal and has been illegal for the 30 years that Applicant has used it. Moreover, he just stopped smoking it less than two years ago. Under these circumstances, AG ¶ 25(a) does not apply.

Applicant’s signed statement memorializing his intention not to use marijuana in the future triggers the application of AG ¶ 25(b)(4). Applicant, however, did not address the issue of whether he will associate with his marijuana-using friends in the future, nor did he provide any evidence from a counselor that his marijuana use does not pose a problem. None of the other mitigating conditions 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) 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.

Applicant's marijuana use was infrequent, but longstanding. Moreover, because the conduct is illegal, it calls into question his judgment. Applicant deserves credit for disclosing his marijuana use. However, it is too soon to conclude that it has been mitigated.

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

Conclusion

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

MARC E. CURRY
Administrative Judge