



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



In the matter of:)	
)	
-----)	ISCR Case No. 10-03232
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

March 7, 2011

Decision

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

On September 17, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns 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 (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 an October 4, 2010, response, Applicant admitted all allegations raised under Guideline H and requested a hearing. DOHA assigned the case to me on December 6, 2010. The parties proposed a hearing date of February 15, 2011. A notice setting the hearing date for February 16, 2011, was erroneously issued on February 19, 2011. An amended notice was sent on January 27, 2011, setting the date of the hearing for February 15, 2011, as contemplated. I convened the hearing as scheduled. Applicant gave testimony and presented 10 documents, which were admitted without objection as exhibits (Exs.) A-J. Department Counsel offered two documents, which were admitted as exhibits (Exs.) 1-2 without objection. On February 24, 2011, the transcript (Tr.) of the proceeding was received and the record was closed. Based on a thorough review of the

testimony, submissions, and exhibits, I find Applicant failed to meet his burden of mitigating security concerns related to drug involvement. Clearance is denied.

Findings of Fact

Applicant is a 24-year-old software engineer who has worked for the same defense contractor since June 2009. He attended a highly competitive university, where he earned a bachelor's degree in mechanical engineering with a minor in mathematics. He is currently enrolled in a master of science and engineering program. Applicant is single and has no children.

Applicant first experimented with drugs in high school, when he used marijuana a few times with friends at boarding school. He talked about those experiences with his parents, ceased using drugs, and graduated in June 2005. In college, he often saw people using marijuana at parties. As a freshman, he used marijuana on a couple of occasions. In his sophomore year, Applicant was in an "experimental mood" and he tried it again "three or four times."¹ During the first semester of his senior year, Applicant used marijuana about three or four times. In sum, he used the substance about a dozen times between the ages of 15 or 16 and 21. He bought it about two times. He did not develop a reliance on the drug. Applicant surmised that "there was really no rhyme or reason to [his usage], it wasn't a habit, it was just stupid immaturity, just doing it whenever, for no real reason whatsoever. . . . Being a kid, being experimental, trying new things, and I regret it."²

In 2008, Applicant started his senior year of undergraduate school after a summer internship with his current employer. He believes he may have signed an acknowledgment of an anti-drug policy, but is unsure.³ He knew that he should not use illegal drugs during his internship and did not use them that summer.⁴

During the 2008-2009 academic year, Applicant faced some difficulty balancing his studies and collegiate extracurricular obligations with the burdens of completing his senior project, an activity fraught with teamwork and deadlines. When his project team split up, Applicant faced additional stress in the preparation of his senior project. That winter, feeling he needed to "pull an all nighter" on occasion, he looked into Adderall. Adderall, a prescription medication generally used for Attention Deficit Disorder and Attention Deficit Hyperactivity Disorder, was available through campus peers and used for helping students stay alert and focused. It is a stimulant. Applicant purchased the medication on three different occasions from peers who had been prescribed the medication. On reflection, Applicant states that his use of the medication was immature

¹ Tr. 20.

² Tr. 21.

³ Tr. 37.

⁴ Tr. 38-39.

and “really wasn’t worth it.”⁵ He has not misused Adderall or any other prescription medications since that academic year.

In March 2009, during his second semester of his senior year, Applicant and some friends went to a popular spring break venue for “one last hurrah” before graduation.⁶ During the festivities, some of his friends imbibed psilocybin mushrooms. Applicant also indulged in the drug and experienced hallucinogenic effects of up to an estimated four hours.⁷

Applicant graduated from undergraduate school in May 2009. Around the same time, he quit using inhalants, a practice he has used on rare occasions since about 2002. His inhalant of choice was a pressurized air duster, designed for removing debris from computers and electronics which, when inhaled, can give the user “a buzz, a slight high when inhaled.”⁸

In June 2009, Applicant started his current position. In October 2009, he completed a security clearance application (SCA), in which he completely divulged his past illegal drug use to the extent he also included illicit drugs which he never tried, but use of which he had been aware.⁹ He received an interim security clearance later that month. He also advised his friends and former peers to be candid about his past drug use if questioned.¹⁰

In mid-November or late-November 2009, Applicant returned to his alma mater to attend a college party hosted by some former undergraduate peers from a student theatrical organization with which Applicant had been active. Caught up in their reunion, Applicant had a “momentary return to the college mentality, where [he] really wasn’t thinking about consequences.”¹¹ When psilocybin mushrooms were produced, he again tried the drug. Since making that decision, “there hasn’t been a day that has gone by, since that day, that [he has not] thought about it, and regretted it from the bottom of [his] heart. From the bottom of [his] gut.”¹² He is particularly rueful about his decision “because it was shortly after where I had my interrogation” in connection with his

⁵ Tr. 24.

⁶ *Id.*

⁷ Ex. 2 (Interrogatories, dated Dec. 18, 2009 – Feb. 9, 2010) at 17.

⁸ Tr. 15. Applicant’s use of the air duster was infrequent and sporadic. He estimates he used it every few months. Tr. 38.

⁹ See Tr. 43, Ex. 1 (SCA, dated Oct. 19, 2009) at 55-57 of 62.

¹⁰ Tr. 26-27.

¹¹ Tr. 26.

¹² *Id.*

security clearance.¹³ After using the drug, Applicant immediately appreciated the severity of his lapse, although he was initially unsure of what the repercussions would be.¹⁴ When interviewed by Office of Personnel Management (OPM) investigators on December 18, 2009, he, with notable embarrassment, disclosed his use of the mushrooms the previous month.¹⁵

Appreciative of the fact that drug use is incompatible with his profession, Applicant made immediate changes in his life and gave “up on the whole party scene.”¹⁶ In trying to “rededicate toward making [himself] a better person,” he decided to concentrate on health and working out, ultimately losing 25 pounds.¹⁷ He also took up golf and joined a local basketball league. Applicant enrolled in a competitive master’s degree program, in which he is currently excelling.¹⁸ He became absorbed in his work, where his rating has improved from “satisfactory contributor” to “exceptional contributor,” a ranking rarely distributed by company management.¹⁹ In the wake of his renewed concentration on his work, Applicant has been awarded multiple peer-initiated performance awards in the past year.²⁰ He is given high praise by his superiors and peers for his reliability and work product.²¹ In the summer of 2010, he was honored by being selected to speak at an event honoring company interns.²² In his spare time, he now stays home, where he is currently studying Spanish language, or visits with his girlfriend. Socializing with peers is usually limited to meals or meeting for a drink.²³

Applicant has not used illegal drugs since November 2009 and he has no interest in using them again. He no longer associates with the undergraduate crowd with whom he once used drugs.²⁴ He has not returned to campus since November 2009. A non-drug using peer from college confirms that Applicant is no longer a habitue

¹³ *Id.*

¹⁴ Tr. 27-28.

¹⁵ Ex. 2, *supra*, note 7 at 4.

¹⁶ Tr. 29.

¹⁷ Tr. 28-29.

¹⁸ *Id.*; Ex. E (Graduate transcript, dated Dec. 28, 2010).

¹⁹ Tr. 28; Ex. B (Appraisal, 2009), Ex. C (Appraisal, 2010).

²⁰ Tr. 28-29; Ex. D (Peer recognition awards, 2010).

²¹ *See, e.g.*, Exs. B and C, *supra*, note 19; Exs. H and J (References, 2010).

²² Ex. G (Intern event invitation, 2010).

²³ Tr. 29.

²⁴ *See, e.g.* Tr. 29, 33. Applicant stated, “I haven’t been exposed to drugs at all. I don’t . . . hang out with people who use them.” Tr. 33-34.

of the campus scene.²⁵ His remaining tie to his college is serving as the elected alumni member of an adult board overseeing the collegiate theatrical organization in which Applicant was active as an undergraduate.²⁶ It was with those undergraduate members he formerly used drugs while at school. Those on the adult board are professionals, considerably older than Applicant, and do not use drugs at their meetings.²⁷ Their meetings are professional and conducted off-campus.²⁸ Applicant's girlfriend, who used drugs in college, is now drug-free. She encourages Applicant to similarly lead a drug-free lifestyle.²⁹ In addition, residing in the same city in which he went to college, he sometimes sees fellow alumni with whom he used drugs at college. On such encounters, drug use is neither discussed nor indulged.³⁰

Applicant submitted a signed statement confirming that he has not used, bought, or sold any controlled substances since November 2010. It states his intention to not use any controlled substance in the future and that he will immediately forfeit any security clearance granted should he again use drugs.³¹ He knows that his employer has a no-drug policy.³² Applicant is demonstrably committed to his work and his employer. His contrition for his past drug use and his November 2009 lapse is genuine. He was highly credible in his expressed intent to refrain from illegal drugs.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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." The administrative judge must consider all reliable information about the person, past and present, favorable and unfavorable, in making a decision.

²⁵ Tr. 29.

²⁶ Tr. 30.

²⁷ Tr. 49.

²⁸ Tr. 49-50.

²⁹ Tr. 34, 47.

³⁰ Tr. 41-42. The last such friend encountered told Applicant that he no longer uses drugs. Tr. 42.

³¹ Ex. A (Statement, dated Jan. 18, 2011).

³² Tr. 35.

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.

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. . . .”³³ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.³⁴

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 about 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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”³⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.³⁶

Based upon consideration of the evidence, Guideline H (Drug Involvement) is the most pertinent to this case. Conditions pertaining to this AG that could raise a security concern and may be disqualifying, and those which would mitigate such concerns, are discussed below.

³³ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

³⁵ *Id.*

³⁶ *Id.*

Analysis

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.³⁷ "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.³⁸ "Drug abuse" is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.³⁹

Applicant admitted he used or abused marijuana, an inhalant, a hallucinogen, and a stimulant at various times between about 2002 and 2009. With regard to the hallucinogen, Applicant admitted he used psilocybin mushrooms in 2009, shortly after receiving a security clearance. He also admitted that he has purchased marijuana. Drug Involvement Disqualifying Conditions AG ¶ 25(a) (any drug abuse); AG ¶ 25(g) (any illegal drug use after being granted a security clearance); AG ¶ 25(c) (illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia); and AG ¶ 25(g) (any illegal drug use after being granted a security clearance) apply. With disqualifying conditions raised, the burden shifts to Applicant to mitigate related security concerns.

Applicant's drug abuse continued from about 2002 until mid-November or late-November 2009, less than 16 months ago. While the majority of that abuse occurred when he was a high school or college student, Applicant's post-graduate lapse with a hallucinogen occurred after he was granted an interim security clearance. While his attempts at rehabilitation over the past year are highly impressive, there is presently insufficient evidence to establish 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).

Since November 2009, Applicant has refrained from the abuse of drugs. He has redirected his focus on his career, health, social activities, graduate education, and other alumni activities. He has changed his ways and no longer visits those areas in which drugs are used. AG ¶ 26(b)(2) (changing or avoiding the environment where drugs were used) applies. While he no longer spends time with his former collegiate troupe, he still has contact with some individuals with whom he formerly used or shared drugs. While Applicant could work more on eliminating such elements from his life, it is notable that the examples cited do not use drugs presently. Consequently, AG ¶

³⁷ AG ¶ 24.

³⁸ *Id.* at ¶ 24(a)(1-2).

³⁹ *Id.* at ¶ 24(b).

26(b)(1) (disassociation from drug-using associates and contacts) and AG ¶ 26(b)(2) (changing or avoiding the environment where drugs were used) apply.

Applicant has been drug-free for less than 16 months. Given his age, contrition, personal accomplishments, and impressive record for taking rehabilitative action during that time with regard to his past drug use, I might otherwise mitigate his past drug abuse as immature folly subsequently overcome by the rigors and responsibilities of maturity. His use of a hallucinogen within a month of applying for, and being granted, a security clearance for a position at a major company with an anti-drug policy, however, gives me considerable pause. To revert to drug abuse six months after college graduation and a month after receiving a security clearance demonstrates a clear lack of appreciation of the expectations of those who seek to hold a security clearance. While Applicant has presented persuasive mitigation about his pre-graduation drug use, more time than almost 16 months is needed to demonstrate that AG ¶ 16(b)(3) (an appropriate period of abstinence) applies to his November 2009 lapse.

At the hearing, Applicant made several credible statements regarding his reasons for quitting drugs and for refraining from their use in the future. In addition, Applicant submitted highly positive recommendations and assessments from professional peers. He is valued as an employee and he values his position. Since quitting illegal drugs in November 2009, his work performance has markedly improved to the point of excellence, and he has been honored and serves as a younger example of his company's quality workforce. It is clear that he will not do anything more to jeopardize his job or career, which can be sufficient by itself to insure that an applicant will not abuse drugs in the future. Applicant has also submitted a signed statement of intent with automatic revocation of any security clearance granted should he use illegal drugs in the future. I have given appropriate weight and consideration to the signed statement of intent. Applicant, who is not an attorney, prepared and submitted it after sufficient time to consider whether it truly reflected his feelings and intentions. I have no doubt that Applicant is sincere in its expression. I find that AG ¶ 26(b)(4) (a signed statement of intent with automatic revocation of clearance for any violation) applies.

The Government met its initial burden of proving the allegations by submitting Applicant's highly detailed disclosures in his SCA and an interrogatory. But for Applicant's candor, the full extent of Applicant's past drug abuse and his November 2009 drug use may not have been discovered. In this candor, Applicant demonstrated impressive honesty. His description of what he has done to rehabilitate himself since quitting illegal drugs provided sufficient mitigation for his high school and collegiate drug use. His use of a hallucinogen immediately after receiving a security clearance, however, is cause for lingering concern about his commitment and ability to remain drug-free. While his testimony credibly demonstrated that he now appreciates the severity of his lapse, less than two years is insufficient time to demonstrate behavior reflecting his commitment to remaining drug-free. Accordingly, Guideline H of the SOR is concluded against Applicant.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. An 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 a security clearance must be an overall commonsense judgment based on 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, as well as the "whole-person" factors. Multiple facts speak in Applicant's favor. He is a bright, credible, and highly articulate 24-year-old man. His *pro se* appearance was highly organized and impressive. He is a graduate of a prestigious university. He openly disclosed his past drug use on his SCA, where he was over-inclusive in his description of his exposure to illegal drugs and their abuse. Since ending his abuse of drugs in November 2009, Applicant has done much to demonstrate maturity and rehabilitation. He has started work on a master's degree in a competitive field. He has risen as a star performer at work and earned the respect of his peers and supervisors. Applicant has become an integral part of an alumni board. In focusing on his health and starting to compete in sports, he has lost significant weight. He eschews those places where drugs are used, and tries to avoid those who have been known to abuse drugs. He devotes his free time to foreign language study and to his girlfriend, who is supportive in his drug-free lifestyle. Overall, he demonstrated several indications that he has matured considerably in the past 15 months.

Applicant has demonstrated contrition over his past drug use, successful personal rehabilitation, and notable maturation since November 2009. He also demonstrated both a clear understanding of the requirement that he remain drug-free, as well as an unequivocal commitment to remain so. However, given the circumstances, less than 16 months of drug-free living does not establish a sustainable record of successful commitment. While Applicant presented highly persuasive facts and is poised on total rehabilitation for his drug use as a whole, drug involvement security concerns are not fully mitigated at this time. 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	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. Clearance is denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge