



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



In the matter of:)	
)	
-----)	ISCR Case No. 10-03515
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel

For Applicant: Joseph Testan, Esquire

March 29, 2010

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on December 21, 2009. (Government Exhibit 1.) On September 1, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, which detailed 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 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 September 21, 2010, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on October 26, 2010. This case was assigned to me on January 12, 2011. DOHA issued a notice of hearing on January 18, 2011, and I convened the hearing as scheduled on February 9, 2011. The Government offered Government Exhibits 1 and 2, which were received without objection. Applicant testified on his own behalf, called two additional witnesses, and submitted Applicant's Exhibits A through C, also without

objection. The record was left open at the Applicant's request for the submission of additional documentation. Applicant submitted Applicant's Exhibit D on February 11, 2011. This exhibit was received without objection. (Tr. At 91-93.) DOHA received the transcript of the hearing on February 23, 2011, and the record closed. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 24, single, and has a bachelor's degree. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

Guideline H - Drug Involvement

The Government alleges under Guideline H that Applicant is ineligible for clearance because he has used illegal drugs. He admitted all the allegations in the SOR. Those admissions are deemed findings of fact.

Applicant used marijuana about 40 times between July 2005 and June 2009. This use occurred during the time Applicant was attending college. During that period he got in with the wrong peer group, and that is where he used drugs. In 2007 he purchased and used LSD and ecstasy two times each. He also used cocaine in November 2007 and July 2008. After a time, Applicant began to dislike this peer group and separated himself from them. Applicant has not used drugs since that time and expressed a credible intent not to use drugs in the future. (Government Exhibit 2; Tr. at 43-72.) Regarding his decision to not use drugs in the future Applicant states, "I don't want to jeopardize my future, and I've realized that what I was doing, essentially, was wrong." (Tr. at 72.)

Applicant freely admits that this was a very foolish decision on his part. Applicant admitted this use without confrontation in his e-QIP of December 2009 and May 2010 interview. (Government Exhibits 1 and 2.) In addition, he had to approach a supervisor at work, as well as his mother, step-father and girlfriend, and inform them of his use. (Tr. at 78-83.) (See, "Mitigation," below.)

The Applicant submitted a written statement at the same time he submitted his Answer. That statement says:

I [the Applicant], declare and promise that I will never use marijuana or any other illegal drug ever again. I understand and consent to the automatic revocation of my security clearance if I violate this promise. (Applicant's Exhibit A.)

Mitigation

Applicant's mother and girlfriend testified on his behalf. Applicant informed both of them about his drug use in the Summer of 2009, after his last use. This was during the time he was preparing to apply for jobs in the defense arena, and he and his girlfriend were getting to know each other better. They were each surprised by this revelation, but Applicant informed and promised them both that he would not use drugs in the future. (Tr. at 20-23, 31-37.)

Applicant submitted documentary evidence showing that he is a highly respected person and employee. Applicant's Exhibit B contains letters from his father, his step-father, former pastor, a friend, and the parents of his live-in girlfriend. All are extremely laudatory of the Applicant.

Applicant's step-father discussed Applicant's request for advice about disclosing his drug use in college. Concerning Applicant he states, "His [Applicant's] honesty, and this hearing process, have caused him to reflect even more deeply on his mistakes." (Applicant's Exhibit B at 1.)

Applicant's former pastor describes him as a person whose "character and integrity are beyond question." (Applicant's Exhibit B at 3.) His father says Applicant is "very honest, reliable, and trustworthy." (Applicant's Exhibit B at 6.) The letters from a long-time friend, and the parents of his girlfriend, are equally laudatory. (Applicant's Exhibit B at 7-9.)

Applicant's Exhibit B also contains letters from people the Applicant knows from work. The writers describe the Applicant as a "reliable and trustworthy person with strong positive moral values," that he "uses good judgment," and is "reliable." (Applicant's Exhibit B at 2, 4-5.)

The most recent evaluations of Applicant are found in Applicant's Exhibits C and D. Applicant began working for his employer in October 2009. His two evaluations show that he is meeting or exceeding his job requirements in every category and that he is on track.

Policies

Security clearance decisions are not made in a vacuum. 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 to be used as appropriate 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 over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned 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, 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.

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. Security clearance decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. It is also true that DOHA proceedings are not designed to punish Applicants. Rather, they are designed to assess whether an Applicant can be trusted at the present time and in the future to properly safeguard classified information.

Finally, as emphasized by the President in Section 7 of Executive Order 10865, "Any determination under this order . . . shall be a determination 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

The security concern relating to the guideline for Drug Involvement is set out in AG ¶ 24:

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 considered the following:

- (a) any drug abuse; and
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

The Applicant used marijuana about 40 times while in college, ending in June 2009. He also used cocaine, ecstasy and LSD on an experimental basis. I find that both of the above 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 such 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.

The evidence is clear that Applicant's use of marijuana and other drugs was during his college days, when he was young and ran with the wrong crowd, was not habitual in nature, and will not be repeated. Applicant's credible testimonial evidence

shows that he is extremely remorseful about this event, has been truthful about the incident on repeated occasions with the Government and his employers and family, and has taken steps to alleviate any possibility of recurrence. It is greatly to his credit that he submitted a signed statement of intent with his Answer, thereby indicating from an early stage his desire to avoid drug abuse in the future.

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. My Guideline H discussion applies here as well. Applicant engaged in drug use that ended about 18 months before the record closed with regards to marijuana use, longer with regards to his experimental use of other drugs. This use, which was not habitual, occurred during college, when Applicant was young and fairly immature. The record shows that he has matured, understands the nature of his conduct, and credibly shows that such conduct will not happen in the future.

Applicant's conduct was serious, but there is considerable evidence of rehabilitation. Applicant is an intelligent young man with a bright future ahead of him. Based on the state of the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I find that there is no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is no likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me without questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his drug involvement. On balance, I conclude that Applicant has successfully overcome the Government's case opposing his request for a DoD 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:

FOR THE APPLICANT

Subparagraphs 1.a. through 1.d.:

For the Applicant

Conclusion

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

WILFORD H. ROSS
Administrative Judge