



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



In the matter of:)
)
) ISCR Case No. 10-03909
)
)
Applicant for Security Clearance)

Appearances

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

March 3, 2011

Decision

CREAN, THOMAS M., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

On October 29, 2009, Applicant submitted a Questionnaire for Investigations Processing (e-QIP), as part of his employment with a defense contractor. On October 5, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns for drug involvement (Guideline H) and personal conduct (Guideline E). 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); Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the adjudicative guidelines (AG) effective in the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on October 13, 2010.

The SOR alleges that Applicant used marijuana four times between August and December 2009, and subsequent to submitting the e-QIP. Applicant answered the SOR

in an undated response admitting all allegations under both Guidelines E and H. He requested a hearing on the record. Department Counsel timely requested a hearing pursuant to Paragraph E3.1.7 of the Directive. Department counsel was prepared to proceed on December 2, 2010, and the case was assigned to me on December 22, 2010. DOHA issued a Notice of Hearing on January 5, 2011, scheduling a hearing for January 21, 2011. I convened the hearing as scheduled. The Government offered two exhibits marked and admitted without objection as Government Exhibits (Gov. Ex.) 1 and 2. Applicant and one witness testified. I left the record open for Applicant to submit documents. Applicant timely submitted three documents marked and received as App. Ex. A through C. Department Counsel had no objection to the admission of the documents. (Gov. Ex. 3, Memorandum, dated February 2, 2011) DOHA received the transcript of the hearing (Tr.) on February 7, 2011.

Procedural Issues

Applicant did not receive the notice of hearing until January 14, 2011, seven days before the hearing. Applicant is entitled to 15 days advanced notice of a hearing (Directive E3.1.8.). Applicant discussed with Department Counsel the hearing date of January 21, 2011, prior to the Notice of Hearing being mailed on January 5, 2011. Applicant was ready to proceed and had sufficient time to prepare. He affirmatively waived the 15-days notice requirement. (Tr. 5-6)

Findings of Fact

Applicant admits the one SOR allegation under Guideline E alleging use of marijuana after submitting the e-QIP. He admits the two SOR allegations under Guideline H alleging use of marijuana four times between August and December 2009, as well as after submitting a request for a security clearance. His admissions are included in my findings of fact. After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 21 years old, and has been an electrical technician apprentice for a defense contractor since October 2009. He is a high school graduate and has attended technical school. He is single. During high school, Applicant worked part time in various jobs. After high school, he started working for an electrical contractor who also sent him to school at the technical college. He was offered a position with the defense contractor in August 2009, and started work with the contractor in October 2009. (Tr. 9-12, 16-17; Gov. Ex. 1, e-QIP, dated October 29, 2009)

On August 8, 2009, Applicant broke up with his girlfriend and was at a party with friends. One of his friends had some marijuana and shared it with Applicant. Applicant admitted he used the drug as an experiment. At the time, Applicant had been approved for hire by the defense contractor but was waiting for a position to open for him. Applicant started working with the defense contractor in October 2009, and completed a security clearance application that day. The only advice he received from the employer was to be honest and truthful on the form. In response to question 23(a) he admitted to the one-time use of marijuana on August 8, 2009. Later, in response to questions from a

security investigator, Applicant admitted using marijuana three times since completing his security clearance application. The last use was in December 2009. He used marijuana with the same friend each time. The friend supplied the marijuana. He has not seen his friend since late 2009 when the friend went to Iraq in his employment with a different defense contractor. He still considers the person a close friend. His use of marijuana on each occasion was experimental, and he does not intend to use drugs in the future. He has never used another drug, had treatment for drug use, or failed a drug test. The drug had no effect on his work, finances, or personal life. His parents are aware of his drug use and counseled him not to use the drug. (Tr. 23-32, 37-41; Gov. Ex. 2, Response to Interrogatories, dated July 22, 2010 at 5)

Applicant testified that when he started with the defense contractor, he was provided a handbook of their personnel policies. He did not read the book carefully or thoroughly. He was not required to undergo a urinalysis before starting employment. He did not remember being told at his job interview about a company policy prohibiting illegal drug use. In completing the security clearance application, Applicant was embarrassed and regretted his use of an illegal drug. His facility security officer told him to be truthful and it was the government's determination if he would be granted access to classified information. He admitted his drug use since he wanted to be truthful and honest on his application. He did not discuss his drug use with other employees until after being interviewed by a security investigator in early 2010. His fellow employees stressed to him the requirement to be truthful and told him about how they and others lost jobs because of illegal drug use. They provided guidance at that time about not using drug and its affect on his judgment and character. He did not discuss his drug use with his supervisor until July 2010, after he received interrogatories concerning his drug use. When he used the illegal drug, he was young and naïve. He has learned a very valuable lesson since then concerning drug use. (Tr. 32-37, 41-47)

Applicant's supervisor testified that he is a former United States Marine. He has worked for the defense contractor for three years as a project manager. He previously worked for another defense contractor for over 19 years. He has held a security clearance since he was on active duty with the Marines. He was responsible for hiring Applicant. He knew Applicant as a small boy since he was friendly with Applicant's parents. He did not realize he knew Applicant when he hired him. Applicant is well regarded by his company's leadership. He is considered by them to be an exemplary employee that the company stands behind and wants to keep in the company. The company's customers have also told him about Applicant's excellent work. (Tr. 47-52, 60-63)

The supervisor further testified that the company policy prohibits illegal drug use by its employees, because almost 100% of the employees are required to have some level of access to classified information. The company has an employee assistance program for employees that may experience a problem with illegal drugs. The company works with its employees to rehabilitate them and get them on the right track. Employees are told about the company's illegal drug use policy prior to being hired. He believes he told Applicant before he hired him that the company does not tolerate illegal drug use. After learning of Applicant's drug use, he strongly counseled him about the

serious consequences of illegal drug use both as a supervisor and a friend. He made sure Applicant understood the consequences and learned his lesson. He does not excuse Applicant's drug use but notes that he was young and impressionable and did not know the consequences of his actions. The company knows Applicant made a big mistake but is standing by him. (Tr. 52-60, 63-67)

After the hearing, Applicant submitted to a random urinalysis drug test. (App. Ex. A, Letter, dated February 1, 2011) Test results were negative for illegal drug use. (App. Ex. B, Test results, dated January 25, 2011) Applicant also executed his company's document agreeing to random drug testing at the direction of his supervisor. He can be terminated for cause for any positive drug test. (App. Ex. C, Letter, dated February 1, 2011).

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised Administrative Guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 common sense 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, 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 burden of persuasion to 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or 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.

Analysis

Guideline H, Drug Involvement

The use of an illegal drug can raise questions about an individual's reliability and trustworthiness, because it may impair judgment and raises questions about a person's ability or willingness to comply with laws, rules, and regulations. Drugs are mood and behavior altering substances, and include those listed in the Controlled Substances Act of 1970. Marijuana is listed in the Act. Drug abuse is the illegal use of a drug or the use of a legal drug in a manner that deviates from approved medical direction (AG ¶ 24). Applicant admits marijuana use four times from August 2009 until December 2009. Applicant admits using marijuana after completing a security clearance application on October 9, 2009. This offense is also cross alleged under Guideline E for personal conduct. Applicant's drug use raises Drug Involvement Disqualifying Condition (DI DC) AG ¶ 25(a) (any drug use). DI DC AG ¶ 25(g) (any illegal drug use after being granted a security clearance) does not apply since Applicant has not been granted access to classified information.

I have considered the Drug Involvement Mitigating Condition (DI MC) AG ¶ 26(a) (the behavior happened so long ago, was so infrequent, or happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment). This mitigating condition does not apply. Applicant admits using marijuana four times from August 2009 until December 2009. His last use of the illegal drug was only 15 months ago. It did not happen just once but four times in a four month period. Applicant made the decision to use the illegal drug when offered by a friend. This was not an unusual circumstance and could likely recur.

I also considered DI MC AG ¶ 26(b) (a demonstrated intent not to abuse 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). This mitigating condition does apply. Applicant has demonstrated intent not to abuse illegal drugs in the future. There is no "bright line" time limit to determine whether past illegal drug use continues to affects an individual's present reliability and trustworthiness. The totality of the circumstances must be carefully evaluated to determine if there has been a change in circumstances concerning an applicant's use of illegal drugs. If the evidence shows a significant period of time has passed without evidence of misconduct, there must be an evaluation whether that period of time demonstrates changed circumstances or conduct sufficient to indicate a finding of reform or rehabilitation. Applicant was only twenty years old when he first

used marijuana. He was not working for the defense contractor, and had not completed a security clearance application. He was young and naïve and not aware of the consequences of illegal drug use. However, when he continued his illegal drug use three more times, he was working for the defense contractor, had completed the security clearance application, and knew of the security concern for use of marijuana. He may not have understood the company policy of not using illegal drugs, but he knew there was a security concern. The circumstance that causes concern is his use of illegal drugs after knowing such use was a security concern. His continued use of marijuana shows poor judgment. However, Applicant presented information to show changed circumstances concerning his use of an illegal drug. Fifteen months have past since the last use. He acknowledged that his past illegal drug use was a mistake when he was young and naïve. He stated his intent not to use illegal drugs in the future. His supervisor has strongly counseled him concerning illegal drug use. He now understands his company's policy on illegal drug use and he has executed a document subjecting him to random urinalysis and immediate termination for a positive test. He recently passed a random urinalysis. All of these factors indicate a change in circumstances to show he will not use illegal drugs in the future. Applicant has presented sufficient information to mitigate security concerns for illegal drug use.

Guideline E, Personal Conduct

A security concern is raised because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. (AG ¶ 15) Personal conduct is always a security concern because it asks the central question does the person's past conduct justify confidence the person can be entrusted to properly safeguard classified information. Applicant used an illegal drug after completing a security clearance application. This fact raises Personal Conduct Disqualifying Condition (PC DC) ¶AG 16(c) (Credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information); and PC DC AG ¶ 16(d) (credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicting that the person may not properly safeguard protected information. This includes but is not limited to consideration of: . . . (3) a pattern of dishonesty or rule violations).

I have considered Personal Conduct Mitigating Condition (PC MC) ¶17(d) (The individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur). As noted under the analysis of drug involvement,

Applicant has presented sufficient information to demonstrate a changed circumstances concerning illegal drug use. He has not used illegal drugs in over 15 months, has become aware of his company's policy concerning illegal drug use, has been strongly counseled by his supervisor, has passed a urinalysis test, and executed the appropriate document that subjecting him to random urinalysis and immediate termination for a positive test result. These factors establish intent not to use illegal drugs in the future. Personal conduct security concerns are mitigated.

“Whole-Person” Analysis

Under the whole-person concept, the administrative judge evaluates the applicant's conduct and all of the circumstances. An 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 a security clearance must be an overall commons sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant used marijuana four times when he was 20 year old. He used once before executing a security clearance application but three times after requesting a security clearance. It has been 15 months since his last use of marijuana. He is now aware of his company's policy concerning illegal drug use and the consequences if he does use illegal drugs. He has been strongly counseled by his supervisor concerning drug use, has passed a drug urinalysis, and stated he is subject to random urinalysis and immediate terminated for a positive test result. He presented sufficient information to support his intent not to use illegal drugs in the future. The record evidence leaves me with no questions concerning Applicant's eligibility and suitability for a security clearance. For all these reasons, Applicant has mitigated drug involvement and personal conduct security concerns.

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 E:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

Paragraph 2, Guideline H: FOR APPLICANT

Subparagraphs 2.a - 2.b: For 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.

THOMAS M. CREAN
Administrative Judge