



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



In the matter of:)	
)	
)	ISCR Case No. 10-06187
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: *Pro se*

July 13, 2011

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On December 7, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, Drug Involvement. DOHA acted under Executive Order (EO) 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on December 29, 2010, and requested a hearing before an administrative judge. The case was assigned to me on March 3, 2011. DOHA

issued a notice of hearing on March 10, 2011, scheduling the hearing for April 12, 2011. Because of the potential for a government-wide shutdown on the hearing date, the case was rescheduled to May 10, 2011. The hearing was convened as rescheduled on May 10, 2011. The Government offered exhibits (GE) 1 and 2 which were admitted into evidence without objection. Department Counsel's exhibit index is marked as Hearing Exhibit (HE) I. Applicant testified, presented one witness, but did not have any documents at the hearing. The record was held open until May 27, 2001, to allow submission of additional evidence. Applicant submitted exhibits (AE) A and B that were admitted into evidence without objection. Department Counsel's transmittal letter is marked as HE II. DOHA received the hearing transcript (Tr.) on May 18, 2011.

Findings of Fact

In Applicant's answer to the SOR, he admitted the single allegation of drug use under Guideline H. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 26 years old. He is single and has no children. He has a master's degree. Since January 2010, he has worked for a defense contractor as an engineer. He has no military service and has not previously held a security clearance.¹

Applicant's admitted conduct raised in the SOR includes: using marijuana on numerous occasions from January 2002 through December 2009 (See SOR ¶ 1.a).

Applicant attended college from 2002 through 2009. During this time, he obtained both a bachelor's and a master's degree in engineering. It was during this time that he began using marijuana. His use of marijuana varied to a few times a year to as many as 10 times a year. He used more during the early part of his college career than he did later. He used at parties with some of his college friends by smoking marijuana through a bong or smoking a joint. One time, he ate brownies containing marijuana. The effects he felt from smoking marijuana were the urge to laugh more often and being hungry. He stopped smoking marijuana in November or December 2009.²

He stopped using marijuana for at least two reasons. First, he moved from his college location across the country to take his current job, and he saw the move as a fresh start to get away from his college activities. Second, he was starting competitive bicycling and he needed to be in peak performance condition for that endeavor. He testified that he does not intend to use marijuana in the future. He also signed a "no intent to use statement." He understands the ramifications of his job and the requirement to be drug-free. He is willing to undergo random drug testing by his employer. Although he still has some friends who use marijuana, he makes it a practice to leave the setting if marijuana is produced by those friends. He admitted his past

¹ Tr. at 5; GE 1.

² Tr. at 38-40, 45; GE 2.

marijuana use in his security clearance application and also to a defense investigator during his security clearance interview. He was consistent with his admissions.³

The chief operating officer (COO) of Applicant's company testified that Applicant is a "star performer" for the company. He also highly recommended him for a security clearance (He is also the company's facility security officer). Although the company does not currently have a drug testing program, he is willing to implement one. He was aware of Applicant's college drug use. Applicant was given an overall "outstanding" on his recent performance appraisal, which is the highest rating available.⁴

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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.

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

³ Tr. at 32-35, 37-45; GE 2; AE B.

⁴ Tr. at 20-28; AE A.

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 that an 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.

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).

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.

I have considered all of the evidence in this case and the disqualifying conditions under Drug Involvement AG ¶ 25, including the following:

(a) any drug abuse.

Appellant used marijuana on a number of occasions while in college. I find the above disqualifying condition applies.

I have considered all of the evidence in this case and the mitigating conditions under Drug Involvement AG ¶ 26, including 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 current 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 were used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant's use of drugs was infrequent and his last use was over one year ago. In this case, because of his youthfulness while attending college, the period of abstinence is sufficient to demonstrate Applicant's intent not to use in the future. Additionally, his commitment to competitive cycling and his expressed written intent not to use drugs in the future are evidence of a demonstrative intent not to use in the future. AG ¶¶ 26(a) and 26(b) both apply. Applicant has mitigated his past drug use.

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 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 considered the circumstances of Applicant's marijuana use while in college. I also considered Applicant's supportive character evidence from his current COO who recommends granting a clearance to Applicant. Finally, I considered Applicant's statement of intent not to use drugs in the future. Applicant provided sufficient evidence to mitigate the security concerns.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline H, Drug Involvement.

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

Subparagraph 1.a: 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.

Robert E. Coacher
Administrative Judge