



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



In the matter of:)	
)	
)	ISCR Case: 10-06193
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

June 28, 2011

Decision

DAM, Shari, Administrative Judge:

Applicant failed to rebut or mitigate the Government’s security concerns raised under Guideline H, Drug Involvement. His eligibility for a security clearance is denied.

On April 16, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On October 29, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under the guideline for 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 effective within the Department of Defense for SORs issued after September 1, 2006.

On November 16, 2010, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On March 8, 2011,

Department Counsel prepared a File of Relevant Material (FORM), containing six Items, and mailed him a complete copy on March 15, 2011. Applicant received the FORM on March 22, 2011, and had 30 days from its receipt to file objections and submit additional information. Applicant did not file a response. On May 12, 2011, DOHA assigned the case to me.

Findings of Fact

In his Answer, Applicant admitted the factual allegations contained in the SOR. His admissions and responses to DOHA interrogatories are incorporated into the findings herein. (Items 4, 6.)

Applicant is 30 years old and single. In January 2010, he completed a bachelor's degree. In July 2010, he began a position as a geospatial associate for a federal contractor. Prior to this position, he worked for private companies while attending school and periods in between.

Applicant has a history of illegal drug abuse. He used and purchased marijuana with varying frequency from January 2003 to March 2009. He used cocaine about five times between May 2007 and June 2009. He used controlled substances without prescriptions from October 2006 to March 2010. He asserted he does not intend to use illegal drugs in the future. He no longer associates with people who use drugs. He claimed that he changed his life since starting his current position. There is no evidence that he participated in substance abuse treatment or been diagnosed as having a drug abuse problem. (Item 6.)

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 (AG) 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 AG ¶ 2(a), describing 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 "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” 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.”

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 an 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 security concern pertaining to 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. (a) 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; (b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

This guideline notes several conditions that could raise security concerns. Based on Applicant's admissions that he began using drugs illegally in January 2003 and continued using them up to March 2010, the Government raised a disqualifying condition under AG ¶ 25(a), “any drug abuse (see above definition).”

After the Government raised a potential disqualifying condition, the burden shifted to Applicant to rebut and prove mitigation of the resulting security concerns under this guideline. AG ¶ 26 includes examples of conditions that could mitigate the security concern arising from illegal drug use:

(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; and,

(4) a signed statement of intent with automatic revocation of clearance for any violation;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; 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.

AG ¶ 25(a) does not apply because Applicant regularly used illegal drugs and misused prescription drugs from 2003 to 2010. Given the frequency and seven-year history of Applicant's drug abuse, his behavior casts doubt on his current trustworthiness and good judgment. Other than an assertion in his response to Interrogatories that he did not intend to illegally use marijuana or other drugs in the future, he failed to provide evidence to demonstrate that intention and warrant the application of AG ¶ 25(b). Applicant's uncorroborated statement that he has not illegally used drugs since March 2010 is insufficient to establish an appropriate period of abstinence in view of his years of illegal drug abuse. The record does not contain evidence to support the application of AG ¶ 25(c). Applicant has not participated in substance abuse treatment or received a favorable prognosis by a qualified medical professional, which evidence is necessary to trigger the application of AG ¶ 25(d).

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.

According to 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. Applicant is a 30-year-old single man who illegally used drugs for seven years, up to March 2010. His assertions that he no longer uses or intends to use drugs illegally are not persuasive. He provided no independent corroboration from a qualified medical health care professional or other individual to support his claims or assure the Government that he does not have a substance abuse problem. His long-term illegal drug use raises issues pertinent to his reliability, judgment, and ability to comply with rules and regulations. Overall, the record evidence leaves me with serious questions as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his 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:	AGAINST APPLICANT
Subparagraphs 1.a through 1.g:	Against Applicant

Conclusion

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

SHARI DAM
Administrative Judge