



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-09573

Appearances

For Government: Marc G. Laverdiere, Esquire, Department Counsel
For Applicant: *Pro se*

November 16, 2011

Decision

HOWE, Philip S., Administrative Judge:

On July 9, 2010, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On June 16, 2011, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing 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 on September 1, 2006.

Applicant received the SOR on June 28, 2011. Applicant answered the SOR in writing on July 13, 2011. Applicant admitted the allegations in the SOR. Applicant requested his case be decided on the written record in lieu of a hearing.

On August 12, 2011, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant on August 12, 2011, and received on August 24, 2011. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file a Response to the FORM within the 30-day time allowed that would have expired on September 23, 2011. I received the case assignment on October 24, 2011. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is denied

Findings of Fact

Applicant is 33 years old, married, and a pipefitter at a government contractor's work site. (Item 5)

Applicant admitted the allegations in the SOR that he used marijuana from 1994 to 1995, and then again from March 2010 until June 2010. (Items 2-6)

Applicant disclosed his marijuana use on his e-QIP signed on July 9, 2010. He disclosed his use was "two joints total, death in family." Applicant stated the period of use was from March to June 2010. (Item 5)

Applicant spoke with a government investigator on August 9, 2010. That interview revealed Applicant used one "joint" in March 2010 with four friends at a social gathering. It was a shared marijuana cigarette. Applicant stated he used marijuana in June 2010 with his wife because his dog died and he was sad. Applicant also admitted he used marijuana in high school in 1994 and 1995. Applicant denied selling, transferring, growing, or otherwise disseminating marijuana. He admitted his wife smokes marijuana in their basement on a monthly basis, but not in his presence. His statement of April 11, 2011, disclosed his wife and he have abstained from marijuana use since he made the statement to the investigator. (Item 6)

Applicant did not submit any documentation that he participated in any drug rehabilitation or education program. He provided no evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

Policies

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 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, the administrative judge applies the guidelines 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.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as 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. 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 illegal drugs:

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.

AG ¶ 25 describes a condition that could raise a security concern and may be disqualifying in this case:

(a) any drug abuse (see above definition).

AG ¶ 25 (a) applies because Applicant admitted he used marijuana twice in 2010 for reasons that are not persuasive or excusable. His marijuana use in June 2010 he explained as helping him get over a “death in the family.” In reality the death was the June 2010 death of his dog. The March 2010 use was a social occasion with four friends passing around a “joint.” Applicant also admitted to the government investigator that he used marijuana in 1994 and 1995, so he has past experiences with marijuana. His e-QIP disclosure was misleading in itself and not persuasive of good judgment and trustworthiness.

After the Government raised a potential disqualifying condition, the burden shifted to Applicant to rebut and prove mitigation of the resulting security concerns. AG ¶ 26 includes four conditions that could mitigate security concerns 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;

(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.

Applicant has not proven that any of these mitigating conditions apply to his case. He lives with his wife who uses marijuana regularly, even though his April 2011 assertion is that both of them have given up regular marijuana use. This statement suggests he was using marijuana more than the two times he disclosed. He has not signed a statement of intent to never use marijuana in the future. His behavior is recent. The actions cast doubt on Applicant's current reliability, trustworthiness because of the extent and context of his disclosure, and good judgment in using a controlled substance at all. Therefore, no mitigating condition applies.

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 facts and circumstances surrounding this case. Applicant was an adult when he used marijuana in 2010. Applicant admitted his use in March 2010 was social with four friends. He voluntarily used marijuana. Applicant excused his use in June 2010 because

of a “death in the family,” leading any reasonable person to believe a human relative died and Applicant was emotionally injured by that death. In fact, his dog died, not a death of the same magnitude as a close relative’s death might be. Finally, Applicant admitted his wife smoked marijuana monthly, so he resides in an environment in which marijuana is used and obtained for use within his home. Applicant also told the investigator he used marijuana for a year in high school.

Applicant’s explanations for two marijuana uses are not persuasive or credible and fail to persuade me that his usage has been limited to two occasions in the last seven years, the time period of inquiry in Question 23 of the e-QIP. He is an adult and knows the prohibitions of the law on marijuana. He failed to provide any independent evidence to corroborate his assertion that he no longer uses marijuana. The government must be able to rely on Applicant being able to perform his job on a competent basis. A person who uses marijuana or is in the presence of someone who uses it regularly cannot give that assurance.

Overall, the record evidence leaves me with questions and substantial doubts 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 under the guideline for Drug Involvement. I conclude the “whole-person” concept against Applicant.

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:	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.

PHILIP S. HOWE
Administrative Judge