



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 10-09678 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

August 31, 2011

Decision

LAZZARO, Henry, Administrative Judge

Applicant failed to mitigate the security concerns caused by his long-term abuse of a variety of controlled substances. Clearance is denied.

On March 28, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.¹ The SOR alleges a security concern under Guideline H (drug involvement). Applicant submitted an undated response to the SOR that was executed by him on April 14, 2011. He admitted all SOR allegations and requested a decision based on the record without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on May 31, 2011, which was mailed to Applicant on June 3, 2011. Applicant was notified he had 30 days from receipt of the FORM to submit his objections thereto or any additional information he

¹ This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended (Directive), and the adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

wanted considered. Applicant acknowledged receipt of the FORM on June 13, 2011. He did not submit a response to the FORM or object to anything contained in the FORM within the time allowed. The case was assigned to another administrative judge on August 10, 2011, and reassigned to me on August 25, 2011, due to caseload considerations.

Findings of Fact

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is a 25-year-old single man who has been employed as a technical apprentice by a defense contractor since November 2009. He graduated from high school in May 2005, and he obtained a bachelor's degree in May 2009. He worked at a variety of jobs during summers and while attending college.

Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP) on January 4, 2010, in which he candidly admitted an extensive history of abusing drugs. Specifically, he admitted occasionally purchasing, transferring, and selling marijuana from December 2003 until August 2009. He admitted smoking marijuana three to five times a week during that period. He also admitted that he purchased and ate ecstasy pills twice, purchased and snorted cocaine less than ten times, and purchased and ate hallucinogenic mushrooms twice between September 2004 and August 2005.

Applicant was questioned by an investigator from the Office of Personnel Management (OPM) on April 29, 2010. During the interview, he asserted that he stopped using marijuana from February 2004 until June 2004 to maintain high grades in school, and from March 2009 until June 2009 because he was beginning his professional career. He also claimed he stopped using marijuana completely in August 2009 because he had outgrown it. He could not say how many times he sold marijuana between December 2003 and August 2009, only that he charged about \$30 for 1.7 grams each time he sold marijuana.

Applicant told the investigator he used cocaine on seven occasions at house parties. He would snort one or two lines of cocaine each time he used it. He also told the investigator he used hallucinogenic mushrooms and ecstasy twice each when he attended a concert in June 2005. He also admitted to the investigator that he used marijuana while vacationing in a foreign country in November 2005 and again in November 2006.

In response to interrogatories he executed on February 9, 2011, Applicant wrote that he consumes one beer daily, one glass of wine per month, and two ounces of liquor per month. Applicant told the OPM investigator that he drank to intoxication about five times annually. However, in his response to the interrogatories, Applicant averred that he no longer drinks to intoxication. He also stated that on two occasions since April 2010 he visited friends with whom he used to use marijuana, and that on each visit he observed them smoking marijuana. He does not think he will be likely to see them twice a year in the future. He wrote that he no longer abuses controlled substance and does not intend to do so in the future.

Policies

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying and mitigating conditions for each applicable guideline. Clearance decisions must be fair and impartial decisions based upon relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶¶ 6.3.1 through ¶¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline H (drug involvement), with its disqualifying and mitigating conditions, is most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.² The Government has the burden of proving controverted facts.³ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁴ although the Government is required to present substantial evidence to meet its burden of proof.⁵ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁶ Once the Government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her.⁷ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁸

No one has a right to a security clearance⁹ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."¹⁰ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹¹

² ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

³ ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

⁴ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

⁶ ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

⁷ ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

⁸ ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

⁹ *Egan*, 484 U.S. at 528, 531.

¹⁰ *Id* at 531.

¹¹ *Egan*, Executive Order 10865, and the Directive.

Analysis

Guideline H, 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. AG ¶ 24

Applicant reported his extensive abuse of marijuana from December 2003 until August 2009, including an unspecified number of sales. He also reported that he abused cocaine on seven occasions from September 2004 to August 2005, and hallucinogenic mushrooms and ecstasy when he attended a concert in June 2005. Disqualifying Conditions (DC) 25(a): *any drug abuse*; and DC 25(c): *illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia* apply.

Applicant's last reported abuse of a controlled substance was in August 2009, and he avers he has no intention of abusing any controlled substance in the future. However, while two years have passed since Applicant's last reported use of marijuana, he associated with friends who were smoking marijuana and with whom he had previously abused marijuana on at least two occasions since April 2010. He did not deny that he may associate with those friends in the future, only that he probably will not be with his those friends twice a year in the future.

This decision is based on the record without a hearing. Applicant failed to submit any material in response to the FORM. He admitted all SOR allegations without explanation or elaboration. Accordingly, there is scant record evidence on which to judge the sincerity or probability of his assertion that he will not abuse controlled substances in the future. Further, Applicant's continued association with friends who are smoking marijuana in his presence severely diminishes whatever reliance might otherwise be placed on his renunciation of future drug abuse.

Based on the above, I find that Mitigating Conditions (MC) 26(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 MC 26(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* do not apply. The remaining mitigating conditions have no application to the facts of this case.

I have considered all relevant and material facts and circumstances present in this case, the whole-person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions. Applicant failed to mitigate the security concerns caused by his long-term abuse of controlled substances. He

failed to overcome the case against him or satisfy his ultimate burden of persuasion. It is not clearly consistent with the national interest to grant Applicant a 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: AGAINST APPLICANT

 Subparagraphs 1.a-e: Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Henry Lazzaro
Administrative Judge

