



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



In the matter of:)	
)	
)	ISCR Case No. 10-09988
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn E. Hoffman, Esq., Department Counsel
For Applicant: *Pro se*

03/08/2012

Decision

LAZZARO, Henry, Administrative Judge

Applicant last used marijuana in 2004. He purchased marijuana for his roommate in an effort to alleviate the debilitating effects of her medical condition. She no longer resides with him, and he has sought counseling to deal with the stress caused by her medical condition and their need to separate. Clearance is granted.

On November 2, 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 security concerns under Guidelines H (drug involvement) and E (personal conduct). Applicant submitted a response to the SOR that was received by DOHA on December 9, 2011. He admitted all SOR allegations and requested a decision on the written record without a hearing. On December 16, 2011, Department Counsel requested a hearing.

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.

The case was assigned to me on January 26, 2012. A notice of hearing was issued on January 31, 2012, scheduling the hearing for February 14, 2012. The hearing was conducted as scheduled. The government submitted one documentary exhibit that was marked as Government Exhibit (GE) 1 and admitted into the record without objection. Applicant testified and submitted 10 documentary exhibits that were marked as Applicant Exhibits (AE) 1-10, and admitted into the record without objection. The transcript was received on February 23, 2012.

Findings of Fact

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

Applicant is a 36-year-old man who has been employed by a defense contractor as a subcontract manager since June 2005. He was previously employed outside the defense industry as a buyer from November 2002 until June 2005. The letters of recommendation Applicant submitted indicate he is an outstanding and dependable employee.

Applicant obtained a bachelor of science degree in business administration in May 1998. He has been pursuing a master's degree in business administration since May 2009. Applicant is single and has no dependents.

Applicant used marijuana with various degrees of frequency beginning when he was in high school and continuing until December 2004. He used LSD about three times while he was attending college in 1994. In the security clearance application he submitted in September 2010, Applicant disclosed that he had used marijuana about four times a month from January 2003 until December 2004. Applicant stopped using marijuana completely before he began working for a defense contractor. He submitted the result of a negative drug screen conducted on a sample he provided on February 3, 2012. He also provided a letter, dated February 8, 2012, in which he stated his intent to abstain from the illegal use of any controlled substance and acknowledged that any violation of that agreement would result in the automatic revocation of any security clearance that he may be granted.

Applicant began dating a woman in 2004, and they began to cohabitate in 2005. Shortly after they began living together the woman developed a debilitating gastro-intestinal medical condition that caused her to be homebound and unable to work. She has continuously sought medical treatment for the condition, but she has not been provided a definitive diagnosis. Marinol was prescribed to treat the side effects of her condition, but it did not produce the desired effect. As a result, Applicant purchased and provided her with marijuana on a number of occasions that he obtained from one of his acquaintances. Applicant disclosed the purchase of marijuana and the reason therefore in the security clearance application he submitted in September 2010.

Approximately one year ago, Applicant realized he could not continue supporting, caring for, and providing marijuana to his girlfriend. He discussed his predicament with her parents, and they agreed to allow her to return home. In August 2011, Applicant moved her and some of her possessions to her mother's house. He placed her remaining possessions

in a storage facility, which he paid for through February 2012. Applicant's girlfriend's parents both submitted letters explaining the circumstances involving their daughter and their agreement that Applicant acted appropriately throughout their relationship. Applicant severed all ties with his girlfriend when she returned to her mother's house in August 2011.

Applicant began counseling sessions with a licensed clinical social worker in about August 2011. He sought counseling to help him deal with the relationship he had to sever with his girlfriend and his concern about having found himself in a position where he was purchasing marijuana for her. He testified the therapist helped him realize that he had been enabling his girlfriend to abuse marijuana. He is continuing to meet with the therapist.

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 conditions and mitigating conditions for each applicable guideline. Each clearance decision must be a fair and impartial decision based upon the 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. Guidelines H (drug involvement) and E (personal conduct) with their disqualifying and mitigating conditions are 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 him.⁷ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁸

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

³ ISCR Case No. 97-0016 (December 31, 1997) at 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 3 (citations omitted).

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

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

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

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

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. (Adjudicative Guideline [AG] 24)

Applicant used marijuana with various degrees of frequency from the time he was in high school until December 2004. He purchased marijuana for his girlfriend’s use on a number of occasions until she moved out of his residence in August 2011. 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.

It has been over seven years since Applicant last abused marijuana. He submitted the results of a recent negative drug screen and a letter of intent that provides for an automatic revocation of a security clearance for any future violation. Applicant’s only reason for purchasing marijuana was in an effort to alleviate the severe debilitating conditions his girlfriend was experiencing. He sought professional counseling to help him deal with the stress he was experiencing from that relationship and his purchases of marijuana for her use. Applicant began discussing his girlfriend’s issues with her parents about one year ago and, with their complete agreement, he completely terminated his relationship with her when she moved back into her mother’s home in August 2011.

The following Mitigating Conditions (MC) apply: 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.*

⁹ *Egan*, 484 U.S. at 528, 531.

¹⁰ *Id.* at 531.

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

Guideline E, Personal Conduct

Conduct involving questionable judgment, lack of candor, dishonesty, or willingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. (AG 15)

Applicant displayed questionable judgment when he used marijuana and again when he purchased marijuana for his girlfriend's use. However, considering Applicant's educational and work history, the length of time that has passed since he personally used marijuana, the extenuating circumstance that caused him to purchase marijuana for his girlfriend, and the letters of recommendation he submitted, a whole-person assessment mitigates Applicant's limited exercise of questionable judgment. I find his conduct is adequately adjudicated under the drug involvement adjudicative guideline, and there is not a separate personal conduct security concern in this case.

Considering 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, the applicable disqualifying and mitigating conditions, the strong letters of recommendation Applicant submitted, including from his ex-girlfriend's parents, the reason Applicant purchased marijuana, and his action in seeking professional counseling to assist him in dealing with a very stressful situation, I find Applicant mitigated the drug involvement security concern. He has overcome the case against him and satisfied his ultimate burden of persuasion. It is clearly consistent with the national interest to grant Applicant a security clearance. Guidelines H and E are decided for 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:	FOR APPLICANT
Subparagraphs 1.a & b:	For Applicant
Paragraph 2, Guideline E:	Against APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Henry Lazzaro
Administrative Judge

