



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



In the matter of:)	
)	
)	ISCR Case No. 10-10056
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

September 9, 2011

Decision

RICCIARDELLO, Carol G., 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 May 24, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H. 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 answered the SOR on June 15, 2011, and requested his case be decided on the written record. On July 12, 2011, Department Counsel requested a hearing before an administrative judge. The case was assigned to me on July 25, 2011. DOHA issued a Notice of Hearing on July 27, 2011. Applicant received the Notice of

Hearing on August 4, 2011. He waived his right to 15 days from the date of the notice to the hearing. I convened the hearing as scheduled on August 17, 2011. The Government offered Exhibits (GE) 1 and 2, and they were admitted into evidence without objections. Applicant testified on his own behalf. He offered Exhibits (AE) A and B, which were admitted into evidence without objections. DOHA received the hearing transcript (Tr.) on August 25, 2011.

Findings of Fact

Applicant admitted the allegation in SOR. I incorporated his admission into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 23 years old. He is not married. Applicant attended college from August 2006 to May 2010 and earned a bachelor's degree. He worked as a summer intern for his current employer in 2009 and was hired upon completion of his college degree. He began full-time employment in July 2010. He will begin a master's program in the fall of 2011.¹

Applicant admitted that in June 2006 he used marijuana with some high school friends before going to college. While attending college he used marijuana approximately three times a year during the next four years. He used it in his dorm room or apartment with high school friends who visited him, and on one occasion he used it with his roommate. They watched movies while using it.²

Applicant completed a security clearance application on March 12, 2010. He admitted he used marijuana one time in May 2010, which was the last time he used marijuana. Applicant stated he was still in college when he used it in May 2010, and he did not think about the fact he had applied for a security clearance. Applicant acknowledged that he exercised poor judgment when he used marijuana and especially after applying for a security clearance.³

Applicant credibly stated that he does not intend to use illegal drugs in the future. He is now focused on his long-term future. He provided a written statement of intent to never use any illegal drugs in the future and agreed to an automatic revocation of a security clearance if he does. He explained he is no longer in a college environment where he was less concerned about the impact of his decisions. Applicant explained when he started working he decided illegal drugs were in his past and he was more

¹ Tr. 20-21.

² Tr. 23-29.

³ Tr. 16; GE 1, 2.

conscientious about the ramifications and consequences of his decisions. He believes he has matured and intends on making good decisions in the future.⁴

Applicant has some minimal contact with the high school friends, with whom he used marijuana, but it is indirect contact and usually through other friends. His current friends do not use illegal drugs. His current roommate works for a government agency and holds a security clearance. He does not use illegal drugs. Applicant only associates with non-drug users now.⁵

Applicant's family and friends are aware of his past drug use. He has no history of criminal conduct. He credibly testified that he has made changes in his life and is committed to abiding by the law.

Character references describe Applicant as responsible and trustworthy. He is considered to be of high moral character and reliable. They describe Applicant as a role model, who is honest and exercises good judgment. Applicant's supervisor considers him a hard worker and valuable contributor to the team. He views him as a man of integrity and is trusted by those who work with him. He is committed, loyal, and devoted to the success of the team.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 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

⁴ Tr. 16, 31; AE B.

⁵ Tr. 16-19.

⁶ AE A.

on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 the 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 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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. 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; Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

I have considered the disqualifying conditions under drug involvement AG ¶ 25 and conclude the following have been raised:

(a) any drug abuse; and

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution; or possession of drug paraphernalia.

Applicant admitted he used marijuana when he was in college. I find the above disqualifying condition applies.

I have considered all of the mitigating conditions under drug involvement AG ¶ 26. The following are potentially applicable:

(a) the behavior happened so long ago, was so infrequent or happened under circumstances that it is unlikely to recur or does not cast doubt on the individual's 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 used marijuana about three times a year during his four years of college. His last use was in May 2010, more than a year ago. After he left the college setting, he made a conscious decision to discontinue using marijuana or any illegal drugs in the future. He is focused on his career and long-term goals. He has matured and has a new appreciation for the consequences of using illegal drugs. He has indirect contact with his high school friends with whom he used drugs in the past. His current friends are non-drug users. He has signed a statement of intent with automatic revocation of clearance for any violation. I find both AG ¶¶ 26(a) and 26(b) apply.

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 have incorporated my comments under Guideline H in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant graduated from college in May 2010. He occasionally used marijuana while in college. He stopped using it when he transitioned from being a college student to a career-oriented adult. He no longer associates with his high school friends, who used drugs. His current friends are non-drug users. Applicant is a poised, articulate, young man, who readily admitted he made some poor decisions while in college. He has moved beyond that period of his life and is focused on long-term goals. I find under the circumstances a sufficient amount of time has passed since his last drug use. I found Applicant's testimony and commitment to not using illegal drugs in the future to be credible. Overall, the record evidence leaves me with no 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 the guideline 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 a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge