



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



In the matter of:)
)
) ISCR Case No. 10-10170
)
)
Applicant for Security Clearance)

Appearances

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

August 31, 2011

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant abused a variety of illegal drugs between October 2006 and June 2010. He purchased several controlled substances, and he cultivated and sold psilocybin. Applicant regrets his illegal drug use, and he does not intend to use any illicit substance in the future. However, his drug involvement was too extensive and recent to conclude that it is safely in the past. Clearance denied.

Statement of the Case

On January 31, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline H (Drug Involvement), which provided the basis for its preliminary decision to deny him a security clearance. DOHA took action 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 allegations on February 17, 2011, and he requested a hearing. On April 20, 2011, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for him. I scheduled a hearing for June 1, 2011. At the hearing, which was convened as scheduled, two Government exhibits (GE 1-2) and six Applicant exhibits (AE A-F) were entered into evidence. Applicant also testified, as reflected in a transcript (Tr.) received on June 15, 2011.

I held the record open until June 15, 2011, for Applicant to submit proof of a recent drug screen. On June 13, 2011, Applicant submitted the results of a June 7, 2011 urinalysis test. The document was admitted without objection as AE G.

Findings of Fact

The SOR alleged that Applicant used and purchased several illegal drugs (LSD, marijuana, psilocybin, cocaine, Ecstasy, opium, "2-CB," and Ketamine) at various times between April 2005 and June 2010; that he used oxycodone and hydrocodone between April 2008 and May 2010; and that he cultivated and sold psilocybin. Applicant admitted the use, purchase, cultivation, and sale of the illegal drugs as alleged in the SOR with the exception of LSD (SOR 1.a). He averred that he used LSD from April 2008 and not from April 2005. Applicant expressed regret for his past drug use, and he denied any intent of future drug involvement. Applicant's admissions are incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 23-year-old electrical engineer, who started working for a defense contractor in June 2010, shortly after he graduated from college. Applicant seeks a Secret clearance for his defense-related duties. He has not previously held a security clearance, even though he worked as an intern for defense contractors during summer and winter breaks while in college. (GE 1; AEs B, E; Tr. 21-22.)

Applicant was a member of his high school's robotics team. He demonstrated maturity in his dealings with team members and mentors alike. (AEs A, B.) After graduating from high school, Applicant entered his state university in its honors program, starting with the fall semester in 2006. (AE F.)

Applicant accepted an offer of marijuana while drunk at a party in October 2006. (Tr. 26.) He continued to smoke marijuana at parties through his freshman year. In the fall of 2007, he moved into another dormitory, where he became friends with another student (friend X), who introduced him to smoking marijuana in his room and eventually to other dangerous, illegal drugs. (Tr. 27.) Applicant abused a variety of illegal drugs within a social circle of seven or eight friends, including his present girlfriend and a female friend (friend Y), both of whom he had known since high school. (Answer; Tr. 24.) Applicant's girlfriend, who is two years younger than him, matriculated in the same university on her graduation. (Tr. 46-49.) Applicant and his girlfriend looked out for one another, taking care on occasion

not to use drugs if the other was using to make sure there were no problems. (GE 2.) Applicant researched the various drugs on the web before trying them, and he trusted friend X to not sell him a drug that would have ill effects. (Tr. 50.) Applicant temporarily abstained from illegal drugs for a couple of weeks in March 2009 to pass a pre-employment drug screen for his present employer. He also did not use any drugs for a few weeks in late fall 2009, when he realized he was going to have to stop using illegal drugs. He returned to the mindset that he could continue to abuse illicit drugs until he graduated (Tr. 42), and he continued to abuse illegal drugs until June 6, 2010. (GE 2; Tr. 23.) Applicant viewed his conduct as “slightly illegal,” with violations frowned on by the government, but not aggressively pursued by police. (Tr. 50.) The details of his illegal drug involvement follow.

- Marijuana: smoked at parties initially from October 2006; from the fall of 2007 to June 4, 2010, daily for the most part (excepting the periods of abstention in 2009), in quantity from .25 grams per day to as much as 2 grams per day; purchased from a couple of male friends (friends X and Z) within his social circle; drug also provided free of charge to him at times. (GEs 1, 2.)
- Ecstasy: ingested between two and four pills 12 times at parties or clubs between January 2009 and June 4, 2010; on occasion taken in combination with psilocybin to prevent “bad trip” sometimes caused by psilocybin; purchased from friends X and Z; taken with his girlfriend and friends X, Y, and Z. (GEs 1, 2; Tr. 35-37.)
- Psilocybin (hallucinogenic mushrooms): ingested 2 to 3.5 grams six times while socializing with his friends and 4 to 8 grams 18 times in presence of his girlfriend only “for spiritual reasons,” between February 2008 and May 19, 2010; purchased psilocybin twice. Cultivated psilocybin, about 100 grams total, in his campus apartment from November 2008 to August 2009; sold half to his friends to cover costs of cultivation, consumed the rest. (GEs 1, 2; Tr. 30-31.)
- Oxycodone: ingested about 20 mg. five times between April 2008 and May 20, 2010, to relax in friends’ apartments or when camping with them; provided free by friend Z or purchased from friend X or a female whose name Applicant cannot recall. (GEs 1, 2.)
- Hydrocodone: ingested about 20 mg. three times between April 2008 and May 20, 2010, to relax in friends’ apartments or when camping with them; provided free by friend Z or purchased from friend X or the female whose name Applicant cannot recall. (GEs 1, 2.)
- LSD: ingested 10 to 12 times April 2008 to May 20, 2010, caused enjoyable hallucinations; purchased from friend X or given to him free by friend Z; taken with friends, including his girlfriend, in their apartments or on camping trips with them. (GEs 1, 2.)

- Cocaine: snorted two or three lines of about 100 grams 10 times total between April 2008 and May 31, 2010, at parties, clubs, or camping trips with his friends, including his girlfriend; purchased from male friend X and provided free by friend Z. (GEs 1, 2; Tr. 39.)
- 2-CB (bromo/dimethoxyphenethylamine): snorted one line of about 20 mg. seven times between September 2009 and January 2010 with friend X and in girlfriend's presence; brought him feelings of euphoria and hallucinations. (GEs 1, 2; Tr. 39-40.)
- Opium: smoked from a pipe or bong seven or eight times with friend Y and with girlfriend in this friend's apartment from February 2009 to January 2010; purchased from friend X. (GEs 1, 2; Tr. 40.)
- Ketamine (animal sedative): snorted about 100 mg. two or three times weekly on average between October 2009 and June 4, 2010, to relax and make his body feel numb, alone or with his friends; initially given to him free of charge by friend X and then purchased from friend X. (GEs 1, 2; Tr. 31-33, 35.)

During the second semester of his junior year, Applicant was offered a summer internship with his present employer. He was advised at that time of the company's policy against illegal drugs. (Tr. 38-39.) Applicant took vitamins and exercised in lieu of taking drugs in order to pass a drug screen. Applicant self-administered several drug tests in March 2009, which he failed. However, he passed the drug test administered to him by his employer in late March or early April 2009. (GE 2.) In August 2009, at the end of his summer internship, Applicant accepted an offer of a full-time position to start on graduation. (GE 1; Tr. 38.)

Applicant graduated from college magna cum laude with a bachelor of science in electrical engineering in mid-May 2010. (AE F.) He used Ketamine, marijuana, cocaine, and Ecstasy thereafter, knowing that he was going to work for a defense contractor. He has not used any illegal drug since June 6, 2010. (GE 2.)

In June 2010, Applicant moved to his present locale for his employment. On June 23, 2010, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP). He disclosed his abuse of illegal drugs, including "recreational smoking [of marijuana] for relaxation purposes, used multiple times per week." As for Ketamine, he indicated that he used the drug "primarily under the care and supervision of [his] girlfriend," once a week on average from October 2009 until June 4, 2010. Applicant denied any illegal drug use after June 4, 2010, before he started his defense contractor employment. He indicated that he had permanently ceased his illegal drug involvement ("This was a phase of my life that is entirely over."). (GE 1.)

Applicant was candid about his illegal drug involvement during a personal subject interview of August 5, 2010.¹ Applicant admitted that he still associated with his girlfriend

¹ The investigator's report is largely consistent with Applicant's admissions of illegal drug involvement except concerning Applicant's first use of LSD, which was reported as occurring in April 2005. On his e-QIP and in

and with another female friend with whom he had used illegal drugs in the past. Applicant indicated that his girlfriend was no longer using any illicit substances, but the other female was still using illegal drugs.² He was in contact also with male friend Z from college, albeit only by Facebook. Applicant denied any contact with the other friends, including male friend X and female friend Y, with whom he had used drugs in the past. In December 2010, Applicant was provided the opportunity to review the investigator's report of his subject interview. Applicant admitted that he had re-established contact with friend Y. However, to his knowledge this friend had stopped using illicit drugs. (GE 2.)

In his February 2011 response to the SOR, Applicant indicated that his girlfriend only participated in illegal drug use because he was doing so at the time, and now that he had ceased his drug involvement, she had no desire to use illegal drugs again. Applicant swore to his intent to abstain to any future drug use with the understanding that any illegal drug use would result in an automatic revocation of his security clearance. (Answer.)

Applicant now regrets his illegal drug use (Tr. 26), which he characterizes as casual because it did not interfere with his life. (Tr. 41.) He cites his entry into the work world as the "forceful circumstance" that led him to realize that he had to give up his drug use. (Tr. 25.) He wants to marry his girlfriend, who is still in college (Tr. 47), and have children as soon as it is financially responsible. He considers drug abuse to be "not proper behavior for a father" and knows that his employer does not tolerate illegal drug use ("continuing using drugs would be disrespectful to my employer as well as immature for a working adult"). (Tr. 23.)

As of early June 2011, Applicant was continuing to associate with three of the persons with whom he previously used drugs: his girlfriend and friends Y and Z. To his knowledge, all three had ceased using illegal drugs. (Tr. 44-45.) He sees friends Y and Z about once a month. (Tr. 47.) He has contact with his girlfriend twice a month during the school year. He is "certain" that his girlfriend has given up drugs based on what she has told him. (Tr. 49.) Applicant no longer frequents the apartments of drug users or drug dealers. (Tr. 24.) He last saw friend X on July 4, 2010. Applicant was not offered any drugs on that occasion. (Tr. 44.)

At his hearing, Applicant expressed his willingness to undergo random drug screens to prove his abstention. (Tr. 52.) On June 7, 2011, Applicant took a drug screen, which tested negative for all drugs tested (barbiturates, benzodiazepines, cocaine metabolites, methadone, and opiates). (AE G.) He has never had any drug treatment, nor has anyone suggested to him that he obtain drug treatment. (GE 2.)

response to the SOR, Applicant indicated that his first use of LSD was in April 2008, which would have been while he was in college. (GE 1; Answer; Tr. 29.)

² Applicant described this female as a friend of his girlfriend. He has not seen his girlfriend's friend in a year, but his girlfriend continues to associate with her at least once a week at school. (Tr. 47.) He believes his girlfriend's friend is still using illegal drugs and consequently, this friend is not welcome in his apartment. (Tr. 43, 47-48.) Applicant does not see a problem with his girlfriend continuing her association with a drug-user, since his girlfriend has no desire to use illegal drugs. (Tr. 48.)

In his first year on the job with the defense contractor, Applicant conducted himself professionally. He kept his commitments with regard to schedule and cost constraints, and he proved himself to be trustworthy, responsible, and dependable. (AEs C, E.) Applicant's supervisors (his section manager (AE C) and task leader (AE E)) and a senior coworker, who has been on business travel with Applicant (AE D), consider him to be an asset to their organization. His task leader is of the opinion that "any stains [Applicant] may possess on his record can be attributed to a lack of maturity that [Applicant] has risen above." (AE E.) While all of these coworkers endorse Applicant for a security clearance, none expressed any knowledge about Applicant's past drug abuse.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant 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 that the applicant may deliberately or inadvertently fail to 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. 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

Drug Involvement

The security concern for 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.

Under AG ¶ 24(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),³ and
- (2) inhalants and other similar substances.

Under AG ¶ 24(b), drug abuse is defined as “the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.” As for the potentially disqualifying conditions, AG ¶ 25(a), “any drug abuse,” applies because of Applicant’s extensive abuse of a variety of controlled dangerous substances between October 2006 and June 6, 2010. AG ¶ 25(c), “illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution; or possession of drug paraphernalia,” applies in that he purchased illegal drugs, and he cultivated and sold psilocybin.

AG ¶ 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,” does not apply to such extensive and recent substance abuse. Applicant abused some drugs fewer than ten times, but he abused marijuana daily for the most part, Ketamine two to three times a week, and psilocybin two dozen times. Concerning AG ¶ 26(b), “a demonstrated intent not to abuse any drugs in the future,” can be shown by “(1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; or (4) a signed statement of intent with automatic revocation of clearance for any violation.” Applicant asserts mitigation under AG ¶ 26(b)

³Schedules I, II, III, IV, and V, as referred to in the Controlled Substances Act, are contained in 21 U.S.C. § 812(c).

based on the fact that his girlfriend, female friend Y, and male friend Z are no longer using any illegal drugs, he is no longer in the college environment, he has abstained for about one year, and he executed a signed statement of intent required under AG ¶ 26(b)(4). Even if I accept Applicant's uncorroborated assertion that his girlfriend and friends Y and Z have ceased their drug abuse, I still cannot give full mitigating weight to AG ¶ 26(b)(1), in light of his girlfriend's ongoing friendship at school with a known drug user, with whom Applicant had also used drugs in the past. So too, although Applicant is no longer in the university environment (see AG ¶ 26(b)(2)), his involvement with some drugs was not confined to parties or socializing at clubs. He smoked marijuana in his apartment starting his sophomore year in college, and he cultivated psilocybin in his campus apartment. So his relocation for his job does not necessarily guarantee against relapse.

Applicant's case for application of AG ¶ 26(b)(3) is even less compelling. His present abstinence of about one year is insufficient to satisfy AG ¶ 26(b)(3), given his daily marijuana abuse and frequent abuse of dangerous hallucinogens, sedatives, stimulants, and narcotics. I do not doubt the sincerity of Applicant's present intent to forego any future drug involvement. He has expressed a willingness to undergo random drug testing to prove his abstinence, and he presented a negative drug screen after his hearing. Nonetheless, the variety in substances abused and in the reasons for the abuse (to relax, to alleviate stress, for hallucinogenic effect, for euphoria, for enjoyment), show the degree to which illegal drugs was part of Applicant's lifestyle. It is too soon to conclude with confidence that his drug abuse is safely in the past.

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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).⁴ In making the overall commonsense determination required under AG ¶ 2(c), I have to consider Applicant's poor judgment in using, purchasing, cultivating, and selling illegal drugs. He abused illegal drugs after deliberately abstaining to pass a test for an internship with a defense contractor, abused at least marijuana during that internship, started using "2-CB" and Ketamine after accepting an offer for employment with the defense contractor knowing of the company's policy against illegal drugs, and used marijuana, Ketamine, Ecstasy, and cocaine after he graduated from college.

⁴The factors under AG ¶ 2(a) are as follows:

(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.

Applicant has proven himself to be an asset to his employer after only one year on the job. Also in his favor, he has been candid about his illegal drug involvement throughout the investigation and adjudication of his security clearance. He also understands that illicit drug involvement is inconsistent with the fiduciary obligations of a security clearance. Provided Applicant remains drug-free, he may be a good candidate for a security clearance in the future. However, I am unable to conclude at this time that it is clearly consistent with the national interest to grant a clearance for Applicant in light of his drug involvement, which cannot be fairly characterized as casual or fully ascribed to youthful indiscretion.

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-1.t: 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.

Elizabeth M. Matchinski
Administrative Judge