



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



In the matter of:)
)
) ISCR Case No. 10-10781
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: John M. Scorsine, Esq.

August 17, 2011

Decision

COACHER, Robert E., 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 March 24, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, Drug Involvement. DOHA acted under Executive Order (EO) 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), implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on April 18, 2011, and requested a hearing before an administrative judge. The case was assigned to me on May 19, 2011. DOHA issued a notice of hearing on May 31, 2011, and the hearing was convened as scheduled on

June 28, 2011. The Government offered exhibits (GE) 1 and 2, which were admitted into evidence without objection. Department Counsel's exhibit index is marked as Hearing Exhibit (HE) I. Applicant testified, presented one witness, and offered exhibit (AE) A that was admitted into evidence. The record was held open for Applicant to submit additional evidence. He timely submitted AE B that was admitted into evidence without objection. Department Counsel's transmittal memorandum is marked as HE II. DOHA received the hearing transcript (Tr.) on July 11, 2011.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations under Guideline H. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 22 years old. He is single and has no children. He has a high school diploma and is currently attending college. Since June 2010, he has worked for a defense contractor as an engineering aid. He works full time for the contractor during the summer months and part-time during the school year when he is a full-time student. He has no military service and has not previously held a security clearance.¹

Applicant's admitted conduct raised in the SOR includes: using marijuana on numerous occasions from January 2006 through March 2010; purchasing marijuana; using ecstasy from February 2009 through March 2010; purchasing ecstasy; and using the prescription drug Percocet, that was not prescribed to him, in October 2008 (See SOR ¶¶ 1.a – 1.e).

Applicant first began using marijuana as a senior in high school. Initially, he used marijuana about once a week but over time that use gradually decreased so that he was using about once a month at the time of his last use in March 2010. Using marijuana was mostly a social event for him. He used it at parties and would obtain it from friends. Sometimes we would purchase the marijuana and other times it was given to him. He maintained a supply of marijuana for his own use. His two most recent uses of marijuana were when he visited with friends. First, in January 2010 during a ski trip he used marijuana four times over the course of a week. His last use of marijuana was in March 2010. He traveled to see some friends and during the course of his visit, he used marijuana three times in a week. He has not used marijuana since applying for a security clearance with his current employer.²

In addition to marijuana, Applicant used ecstasy on two occasions. The first time he used it was in February 2009 when he was visiting some friends. He ingested about one quarter of a gram. His friend gave him the ecstasy. His second use of ecstasy was in March 2010. On the same trip to see friends where he last used marijuana, he also

¹ Tr. at 29-31; GE 1.

² Tr. at 31-35; GE 2.

used ecstasy for the last time. Once again, his friends had the ecstasy and gave him some to use. He paid for the ecstasy. He used the ecstasy because he was encouraged by his friends. He also used non-prescribed Percocet on one occasion in October 2008 while attending college. One of his friends had the Percocet and suggested that he try it. This was the only time he used it.³

Applicant decided to stop using all drugs prior to applying for his present position. He realized that using drugs had no positive effect on his life. According to him, he has not used marijuana since that time. He also has disassociated with many of the friends who used drugs with him, although he still has some infrequent contact with two marijuana-using friends. He lives and goes to school in a different location than these friends so he is able to maintain distance from them. He was not diagnosed as either a drug abuser or drug dependant and has not been through any drug treatment program.⁴

Applicant admitted the full extent of his drug use in his initial security clearance application (SF 86) and he also described in detail his drug use to a DOD investigator. He also offered into evidence a hair analysis drug screening test that showed negative results for five drugs including THC (the metabolite found in marijuana). The test was reported on June 17, 2011. The test purports to capture a look-back window of 90 days of possible drug activity. Applicant also submitted a written statement of intent not to use any illegal drugs in the future.⁵

The security representative from Applicant's company testified for him and stated that Applicant passed the pre-employment drug screening test. He also stated that Applicant was smart, trustworthy, and had integrity. He recommended Applicant for a security clearance.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 ¶

³ Tr. at 36-37, 40; GE 2.

⁴ Tr. at 36, 50; GE 2.

⁵ GE 1; AE A, B.

⁶ Tr. at 20-28.

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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by 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 that an 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

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.

I have considered all of the evidence in this case and the disqualifying conditions under Drug Involvement AG ¶ 25 and found the following relevant:

- (a) any drug abuse; and
- (c) illegal drug possession.

Appellant used and possessed marijuana on a number of occasions. He also used ecstasy on two occasions and Percocet on one. I find the above disqualifying conditions apply.

I have considered all of the evidence in this case and the mitigating conditions under Drug Involvement AG ¶ 26 and found the following relevant:

- (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
- (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.

Although Applicant's marijuana use was frequent, his use of ecstasy and Percocet was infrequent. However, he has abstained from all drug use for over one year. That abstinence is partially corroborated by the drug test offered into evidence. Given his young age and the circumstances of his use (experimentation with friends in high school and college), the uses happened under circumstances unlikely to recur. His change of lifestyle, the negative drug test, and the positive recommendation from the security manager all support the conclusion that his past use does not affect his current reliability, trustworthiness, or good judgment. AG ¶ 26(a) applies. The period of abstinence is sufficient to demonstrate Applicant's intent not to use in the future. Additionally, he has disassociated from most of his drug using friends and submitted a sworn statement of intent not to use any drugs in the future with automatic revocation of clearance for non-compliance. AG ¶ 26(b) 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 the 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 considered the Applicant's supportive character evidence and his negative drug test. I also considered Applicant's statement of intent not to use drugs in the future. I also weighed that he used marijuana on numerous occasions, his age at the time of use, and the circumstances of his use. He also demonstrated a commitment toward non-use of any drugs in the future. Applicant provided sufficient evidence to mitigate the security concerns.

Overall, the record evidence leaves me without 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 Guideline H, 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
Subparagraphs 1.a-1.e:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert E. Coacher
Administrative Judge