



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



In the matter of:)	
)	
)	ISCR Case No. 11-00003
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray Blank, Esq., Department Counsel
For Applicant: *Pro se*

05/18/2012

Decision

HEINY, Claude R., Administrative Judge:

In September 2010, Applicant provided false and misleading information by stating he had used marijuana two times in 1985 when in fact he had used it 10 times. Applicant has rebutted or mitigated the security concerns under Guideline E, Personal Conduct. Clearance is granted.

History of the Case

Applicant contests the Department of Defense's (DoD) intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on November 8, 2011, detailing security concerns under Guideline E, Personal Conduct.

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

On November 17, 2011, Applicant answered the SOR and requested a hearing. On April 10, 2012, I was assigned the case. On April 2, 2012, DOHA issued a Notice of Hearing for the hearing held on April 12, 2012.

The Government offered exhibits (Ex.) 1 through 5, which were admitted into evidence without objection. Applicant testified and submitted Exhibits A through C, which were admitted into evidence without objection. On April 20, 2012, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he admitted the factual allegations in the SOR, and his admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 46-year-old security officer who has worked for a defense contractor since February 2010, but has been working in the same position since December 2005. (Tr. 29) He seeks to maintain a security clearance. In June 2005, Applicant was honorably retired from the Navy after 20 years of service. He retired as a communications specialist in the grade of E-6. (Ex. A, C, 5)

A co-worker stated Applicant is professional in his work ethic, skill level, and attitude. His co-worker trusts him because the co-worker had witnessed Applicant perform his duties under extreme pressure. (Ex. B) Applicant's supervisor, who has known Applicant since 2005, stated Applicant has outstanding character. (Tr. 31) Applicant is a fine, upstanding gentleman who does his job well, is fair, and has never given his supervisor a reason to doubt him. (Tr. 36) It would be out of character for Applicant to intentionally make a false statement. (Tr. 39)

Applicant applied for a job with the FBI. In September 2010, he had a polygraph examination. During the pre-test interview, he stated that 25 years earlier, while in high school in 1985, he had used marijuana two times. In the post-test interview, Applicant admitted he had actually smoked marijuana ten times in 1985. (Ex. 3) At the time of the examination, Applicant believed the FBI would not hire anyone who had smoked marijuana more than three or four times, no matter how long ago the usage occurred. (Ex. 4) He was afraid that he would not get the job if he admitted he had used it ten times. (Tr. 23) He was nervous and scared and minimized his usage. (Tr. 23, 27) In the post-test interview he told the examiner he had lied during the examination when questioned about the use of illegal drugs. (Ex. 3) He told the examiner that in 1985, while he was a senior in high school, he and his friends used marijuana ten times during the period of January 1985 through May 1985. He was not hired for the job.

Applicant admits he made a mistake when he intentionally lied about his usage, understands the importance of being honest, and it will not happen again. (Tr. 27-28) His lie had a sizable impact on his life.

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 must 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 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 interests of 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 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 (EO) 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

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness 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 ¶ 16 provides one condition that could raise a security concern and may be disqualifying in regard to falsification of Appellant's security clearance application:

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

In September 2010, during a pre-polygraph interview, Applicant lied about his high school use of marijuana. He said he used it twice when a senior in high school, when in fact he had used it ten times between January 1985 and May 1985. He did this knowingly, believing that he would not get the job if he provided the correct information. The disqualifying condition in AG ¶ 16(b) applies.

The mitigating condition outlined in AG ¶ 17(c), "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," applies. The falsification related to a single question during an interview more than a year and a half ago. The behavior was infrequent and sufficient time has passed since the interview. Applicant realizes his mistake. It was out of character for him and it will not recur. The mitigating condition in AG ¶ 17(c) 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 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. Applicant honorably served 20 years in the U.S. Navy. A year and a half ago, he failed to disclose he had used marijuana ten times 25 years previous and chose to state it was only two uses.

Applicant's supervisor stated that it would be out of character for Applicant to intentionally make a false statement. Applicant does an outstanding job at work and has never given his supervisor any reason to doubt him. Applicant's answer to the single question does not appear to be in keeping with Applicant's character and past military service.

I had ample opportunity to evaluate the demeanor of Applicant, observe his manner and deportment, appraise the way in which he responded to questions, assess his candor or evasiveness, read his statements, and listen to his testimony. 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 from the personal conduct concerns.

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, Personal Conduct: 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 interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge