



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



In the matter of:)	
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)	ISCR Case No. 11-00001
Applicant for Security Clearance)	

Appearances

For Government:
Melvin A. Howry, Esquire, Department Counsel

For Applicant:
Darin M. Groteboer, Esquire
Claery & Green LLP

March 14, 2012

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on August 5, 2010. (Government Exhibit 6.) On April 14, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, which detailed security concerns under Guidelines H (Drug Involvement) and E (Personal Conduct). 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 in writing on May 20, 2011, and requested a hearing before an administrative judge (Answer). Department Counsel was prepared to proceed on June 30, 2011. This case was assigned to me on July 8, 2011. DOHA

issued a notice of hearing on July 26, 2011. I convened the hearing as scheduled on August 31, 2011. The Government offered Government Exhibits 1 through 7, which were received without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through G, which were also received without objection. Applicant requested the record remain open until September 16, 2011, for submission of additional documents. Applicant Exhibits H through BB were submitted on September 16, 2011, and admitted without objection. DOHA received the transcript (Tr) of the hearing on September 15, 2011. The record closed on September 16, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 45, divorced with three children, and has an Associate of Arts degree. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

Paragraph 1 (Guideline H - Drug Involvement)

The Government alleges under Guideline H that Applicant is ineligible for clearance because he has used illegal drugs. He admitted all the allegations in the SOR under this paragraph. (1.a through 1.j.) Those admissions are findings of fact.

Applicant used illegal drugs from about 1981 until August 2004. He used various forms of methamphetamines, including speed, crank and cocaine, from 1981 through 1984. During that time he was in high school. (Tr at 29-31.)

Applicant's primary drug of choice was marijuana, which he used and purchased from 1981 until August 2004. He also sold small amounts of marijuana in the early years of his use. Applicant stopped all drug use in August 2004, and has not used any illegal drugs since that time. Applicant states that he does not currently use drugs and has no desire or intent to use drugs in the future. (Government Exhibit 7; Tr at 41-42.) In order to show that he will not use marijuana, or any other illegal drugs, in the future, Applicant submitted a signed statement of intent, which states that if there is a violation with regards to drug use, any clearance Applicant holds may be automatically revoked. (Applicant Exhibit C; Tr at 50-51.)

Applicant freely admitted that his marijuana use had a major impact on his ability to make good decisions during those years. He believed that his marijuana use effected his relationships, including his marriage, which ended in divorce. Eventually, Applicant became romantically involved with the wife of a friend. In August 2004 that friend attacked Applicant in front of Applicant's children. (Tr at 32-33, 58, 78-80.)

After he was confronted and attacked by his friend, Applicant was ready to take the major steps necessary to combat his addiction. He voluntarily went to a counselor at his employer's Employee Assistance Program (EAP). (Applicant Exhibit A; Tr at 37-38,

81-82.) This counselor referred Applicant to an outpatient treatment facility, which Applicant attended from September 2004 through February 2005. He successfully completed the program of care at the facility. (Applicant Exhibit B; Tr at 39-41, 86-88.) As part of his post-treatment actions, Applicant has made amends to his family and friends, and he admitted his use to two co-workers. (Applicant Exhibits D and G; Tr at 88-89, 92-93, 96-98.) He also informed his current supervisor of his past drug use after the hearing. (Applicant Exhibit I.)

Applicant began working in the defense industry in 1984, when he was 18 years old. He received a security clearance shortly thereafter. As stated, he used marijuana for approximately 20 years while holding a security clearance. Applicant knew that marijuana use was not allowed by his employers, or by a person holding a security clearance. Applicant thought that his use of marijuana while holding a security clearance was a mistake, stating, "Yes, it has weighed on me for quite awhile." (Tr at 48-50.)

Paragraph 2 (Guideline E - Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has made false statements during the clearance screening process; and that his conduct under Paragraph 1, above, shows untrustworthiness, questionable judgment, unreliability, or other characteristics indicating that Applicant may not properly safeguard classified information. Applicant admitted all the allegations in the SOR regarding this paragraph. (2.a through 2.j.) Those admissions are findings of fact.

Applicant has worked for the defense industry since 1984. He has held a security clearance for most of that time. Accordingly, he has had to fill out personnel security questionnaires on a periodic basis. He actively falsified facts about his drug use on questionnaires dated August 16, 1984; July 25, 1989; April 8, 1995; and September 23, 2001. (Government Exhibits 1, 2, 3 and 4.) His falsifications included facts concerning his use, purchase, and sale of marijuana. Beginning with the 1989 questionnaire, his falsifications also included the fact that he used marijuana after receiving a security clearance. Applicant believes his continued drug use led him to use bad judgment and falsify the questionnaires. (Government Exhibit 7; Tr at 53-56, 69-73.) He testified, "At each signing [of a questionnaire], I felt regret, knowing that it was wrong and being two-faced." (Tr at 57.)

As stated above, in 2004 Applicant went to his EAP for help with his marijuana use. Other than the counselor, he did not discuss his drug use with his employer until February 26, 2008, when he next filled out a questionnaire. (Government Exhibit 5.) In Section 24 of that questionnaire Applicant sets out all the facts concerning his marijuana use. He does the same thing in a questionnaire dated August 5, 2010. (Government Exhibit 6.) He also discusses his drug use in a set of interrogatories dated January 25, 2011. (Government Exhibit 7.)

Applicant has informed his current manager of his drug use, drug treatment, and the fact of this current proceeding. (Applicant Exhibit I.) During his testimony, Applicant

had originally indicated a reluctance to do this. However, after examination by his attorney, Department Counsel, and myself, he showed a much greater awareness of the implications of not being forthcoming. (Tr at 99-112.) Applicant stated, "I think that's a part of making amends is to let my Manager know. If it's fully disclosed, I have nothing to worry about." (Tr at 110.)

Mitigation

Applicant submitted documentary evidence showing that he is a highly respected person and employee. Applicant's current supervisor submitted a letter. He has worked with Applicant for about one year and eight months. He states that Applicant "has displayed professionalism, enthusiasm, integrity and competence in every task that has been assigned to him." (Applicant Exhibit I.)

Letters were also submitted from two co-workers. Applicant has discussed his drug problems with them. The person who submitted Applicant Exhibit D has known Applicant for 20 years. His letter shows that Applicant has freely told him the facts of his marijuana usage and the problems it caused him. The other person, a manager, states he brought Applicant over to another program. He further states that he trusts the Applicant to make good decisions as a security clearance holder. (Applicant Exhibit G.)

Applicant submitted several work-related letters of commendation or recommendation. They are from superiors as well as from a Defense Department employee. (Applicant Exhibits J, K, L and M.)

He submitted performance evaluations covering most of the years between 1992 and 2010. (Applicant Exhibits N through BB.)¹ During that time he worked with three different employers. These evaluations show an employee who was consistently getting high marks for his ability and work performance, which was usually either commendable or outstanding.

Applicant's parents and his long-time girlfriend also submitted letters on Applicant's behalf. (Applicant Exhibits E and F.)

Policies

Security clearance decisions are not made in a vacuum. 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 to be used as appropriate in evaluating an applicant's eligibility for access to classified information.

¹Evaluations were not submitted for years 1993, 1994, 1995, 2000 and 2001.

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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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. 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, "The 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 as to obtaining a favorable clearance 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. Security clearance decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination 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

Paragraph 1 (Guideline H - Drug Involvement)

The security concern relating to the guideline 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. 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 especially considered the following:

- (a) any drug abuse;
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;
- (e) evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program; and
- (g) any illegal drug use after being granted a security clearance.

Applicant used marijuana on a regular basis from 1984 to August 2004. He sold and purchased marijuana during the entire period and he also held a security clearance during the majority of that time. He attended drug treatment in 2004. While there is no written diagnosis or evaluation in evidence, Applicant testified that he was found to be drug dependent in order to enter the program. I find that all of the above disqualifying conditions apply.

I have considered all of the mitigating conditions under Drug Involvement AG ¶ 26 and especially considered the following:

- (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 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 are used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation; and

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant's abuse of marijuana occurred seven years ago. In August 2004, of his own volition after a shattering event in his personal life, he decided to get help from his employer's EAP. The counselor recommended treatment, which Applicant attended. He was successful, as is shown by the "good" prognosis he received and his seven years of sobriety. The evidence in the record, including his extensive and credible testimony, shows Applicant has matured, that he has a credible and sustainable long-term commitment not to use drugs in the future. Paragraph 1 is found for Applicant.

Paragraph 2 (Guideline E - Personal Conduct)

The security concern for Personal Conduct is set out in AG ¶ 15:

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 in any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following Disqualifying Conditions are applicable under AG ¶ 16:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing . . .

The record shows, and Applicant admits, falsifying information concerning his drug use on four questionnaires. These questionnaires were filled out over 18 years from 1984 through 2002. In addition, Applicant also testified that he would like to avoid admitting his drug use to his current supervisor, because that person may look down

upon Applicant. Finally, as set forth above, Applicant had a 20 year history of drug abuse, which ended in 2004. Both of the Disqualifying Conditions apply.

Based on all the available evidence, the following Mitigating Conditions apply under 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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant compellingly showed that all three of these Mitigating Conditions apply in this case. It has been ten years since Applicant last falsified a questionnaire. He came forward voluntarily to his EAP counselor in 2004, and in 2008, 2010, and 2011 was completely forthcoming to the Government about his drug use. He submitted evidence showing that his current supervisor, and other co-workers, know of his drug use and the extent of it. Beginning in 2004 Applicant took responsibility for his conduct, and has worked hard to make amends to his family, friends, and co-workers since that time. Paragraph 2 is found for Applicant.

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. My Guidelines H and E discussion applies here as well. Applicant engaged in drug use that ended about seven years ago, when he engaged in an extensive bout of treatment after admitting to himself that he could no longer use drugs. He is respected at his place of employment, credibly states he will not use drugs in the future, and has mitigated the falsifications of prior questionnaires. In particular, he has matured and both understands and accepts DoD policy concerning use of illegal drugs and the essential requirement that he be completely truthful in all of his dealings with the Government. The record shows that he has matured, understands the nature of his conduct, and credibly shows that such conduct will not happen in the future.

Applicant's conduct was serious, but there is considerable evidence of rehabilitation. Based on the state of the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is also little to no likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me without questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his Drug Involvement and Personal Conduct. He is currently eligible for a security clearance.

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 through 1.e:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a through 2.j:	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.

WILFORD H. ROSS
Administrative Judge