



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



In the matter of:)	
)	
-----)	ISCR Case No. 11-02986
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul Delaney, Esquire, Department Counsel
For Applicant: *Pro se*

January 11, 2012

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, items, and legal arguments in the case file, Applicant does not mitigate drug involvement security concerns. Clearance is denied.

Statement of the Case

On May 25, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. 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 (AGs) implemented by the Department of Defense (DoD) on September 1, 2006.

Applicant responded to the SOR on June 20, 2011, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant

Material (FORM) on September 20, 2011, and did not respond with any supplemental information. The case was assigned to me on November 7, 2011.

Summary of Pleadings

Under Guideline H, Applicant allegedly (a) used marijuana with various frequency from about 1989 (while a senior in high school) until at least June 2010 and (b) purchased marijuana. In his response to the SOR, Applicant admitted the drug-related allegations. He claimed he has not used marijuana in over a year and used it intermittently before quitting altogether in June 2010. He characterized his marijuana purchases as infrequent, with his last purchase occurring over four years ago.

Findings of Fact

Applicant is a 30-year-old network administrator of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant has worked for the same defense contractor since February 2005. He holds a bachelor's degree from a recognized university. (Item 5) He married his only spouse in May 1997 and has three children from this marriage.

In 1989, while he was a senior in high school, Applicant was introduced to marijuana. (Items 5 and 6) He smoked the substance infrequently in high school with friends when the drug was available. He knew students in his high school who would sell small bags of marijuana to both his friends and himself for \$5 to \$10 a bag. (Item 6) Typically, Applicant and his friends would roll the marijuana in cigarette papers and share the joints with each other. (Item 6) He never smoked marijuana more than once a month in high school.

Applicant entered college the year following his high school graduation and once again became involved with marijuana usage. (Item 6) At parties he attended with fellow college students on the weekends, he regularly smoked marijuana. (Item 6) Occasionally, he and his friends smoked marijuana during the week as well. Most of the time, they smoked their marijuana out of rolled cigarettes, or joints, but sometimes they smoked it with pipes. (Item 6)

It was never hard for Applicant to buy marijuana in college. (Item 6) He never purchased more than a small amount of the drug at a time, and only from people he knew. His customary practice was to pool his money with friends and "buy a baggy of marijuana" that contained enough of the substance "to fill a couple of joints or pipes." (Item 6) Once they made their purchases, they would share their marijuana freely with each other at college parties. (Item 6) Applicant continued this use and purchase routine for the three years he was enrolled in this college. (Item 6)

Applicant never became dependent upon marijuana and used it only for recreational purposes. (Item 6) Upon leaving college, he went to work and began dating his current spouse. He resumed his use of marijuana a couple of years later after he

returned to school at a local community college. He estimates he used it a couple of times a month during his community college enrollment.

In 1995, Applicant transferred to a four-year college, different from the one he attended after high school. While a student at this college, he continued to socially use marijuana a couple of times a month. (Item 6) After just one year at this institution, he transferred to his third college. Here, he stayed three years in residence and earned a bachelor's degree. (Item 6) While he continued to smoke marijuana during his residence at these two colleges, he limited his usage to a couple of times a month in social situations. (Item 6)

Applicant and his wife continued to smoke marijuana socially after he graduated from college in 1999, but not as often. Since 2003, he and wife smoked the substance on a bi-monthly basis with friends and neighbors. Once or twice a year, he purchased enough of the substance from friends and neighbors to meet his personal needs. Through July 2007, he made periodic \$50 purchases of an 1/8 of an ounce of marijuana for his personal use. He estimates each purchase supplied the personal needs of his wife and himself for six months to a year. Typically, he smoked his marijuana out of a pipe. Never did he ask his friend or neighbor where they obtained their marijuana supplies, and he assures he never purchased marijuana from drug dealers or suppliers. (Item 6)

By 2007, Applicant and his wife rarely smoked marijuana anymore. He last purchased marijuana in July 2007, and thereafter smoked the substance only a couple of times a year in small group settings with his wife and friends. Concerned about setting a proper example for his young daughter and informed of his need to apply for a security clearance, he and his wife ceased using marijuana altogether in June 2010. (Item 6). Applicant expressed his intention never to use marijuana again and indicated his wife expressed a similar intention to avert any resumption of marijuana use in the future. (tem 6)

Although Applicant's statements are credible, he never provided any written statements or other documentation to gauge the seriousness of his intentions and his wife's intentions. Without any documented corroboration, predictive judgments about his ability to avoid any recurrent marijuana involvement cannot be made with any degree of reliability. To date, Applicant has not sought any treatment for drug use, and has never been diagnosed or treated for the use of illegal drugs. (Item 6).

Although he was afforded an opportunity to supplement the record, Applicant provided no endorsements or performance evaluations on his behalf. Nor did he provide any proof of community and civic contributions.

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to

protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the revised AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

Drug Involvement

The Concern: 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 AG ¶ 24.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *Kungys v. United States*, 485 U.S. 759, 792-800 (1988). As with all adversarial proceedings, the judge may draw only those inferences

which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Between 1989 and June 2010, Applicant used marijuana recurrently and periodically purchased enough of the substance to meet his personal needs. After being introduced to marijuana in high school, he continued using the substance throughout his college enrollments, and in the ensuing years. Between 2003 and June 2010, he and his wife smoked marijuana with friends and neighbors on a bimonthly basis in group social settings. Periodically, he purchased enough marijuana from sources known to him to satisfy his personal needs and the needs of his friends and spouse. By his accounts, he made his last marijuana purchases in July 2007.

Concerned about setting an example for his 11-year-old daughter and obtaining a security clearance, he ceased using marijuana in June 2010. However, he has not provided any corroboration from his spouse or other sources concerning his decision to cease using illegal drugs, and the prospects of his resuming his use of marijuana in the foreseeable future are uncertain. With so much recurrent use of his own and spouse in the record, too much doubt and uncertainty exist to make safe predictable judgments about his ability to avoid recurrent drug involvement.

On the strength of the evidence presented, several disqualifying conditions of the Adjudicative Guidelines for drug abuse are applicable: DC ¶ 25(a), “any drug abuse;” DC ¶ 25(c), “illegal possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;” and DC ¶ 25(h), “expressed intent to continue illegal drug use, or failure to clearly and

convincingly commit to discontinue drug use.” Afforded an opportunity to respond to the FORM materials, Applicant did not reply.

From a whole-person perspective, Applicant has established no independent probative evidence in this record to warrant any different conclusions under the whole-person concept in the Directive. He has provided no endorsements from supervisors and coworkers to soften or mitigate any of the drug and judgment concerns associated with his recurrent and still very recent use of marijuana.

Taking into account all of the facts and circumstances surrounding Applicant’s drug use and judgment lapses, Applicant does not mitigate security concerns related to his drug use and personal conduct issues. Unfavorable conclusions warrant with respect to the allegations covered by Guidelines H and E.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE H: (DRUG INVOLVEMENT): AGAINST APPLICANT

Subparagraphs. 1.a and 1.b: AGAINST APPLICANT

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant’s security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

