



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 11-03251
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

04/24/2013

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the security concerns generated by his illegal drug use and falsifications during his 2007 investigative process. Clearance is granted.

Statement of the Case

On June 28, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing 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).

Applicant answered the SOR on September 22, 2012, admitting subparagraphs 1.a through 1.n, denying subparagraphs 2.a through 2.e, and requesting a hearing. On December 4, 2012, Department Counsel amended Paragraph 2 of the SOR, revising

subparagraphs 2.a through 2.c, and striking subparagraphs 2.d and 2.e. On January 17, 2013, Applicant admitted the allegations, as amended.

I was assigned the case on February 22, 2013. On April 4, 2013, a notice of hearing was issued scheduling the case for April 9, 2013. At the hearing, I received four Government exhibits marked as Government Exhibits (GE) 1 through 4, in addition to one Applicant exhibit (AE A), and Applicant's testimony. The transcript was received on April 24, 2013.

Findings of Fact

Applicant is a 29-year-old single man. He graduated from college in 2005. Since January 2007, he has worked for a defense contractor as a software developer. His duties involve the testing and development of fingerprint and face recognition technology. (Tr. 13)

Applicant used marijuana regularly between May 1999 and September 2008. The frequency of his use ranged from multiple times per day while in college to two or three days per week, after finishing college. (GE 3 at 5-6) In sum, he has smoked marijuana approximately 1,000 times. (Answer at 1)

In December 2000, while in high school, Applicant was arrested and charged with possession of marijuana and drug paraphernalia after the police caught him and a friend smoking marijuana one night in a parked car. (Answer at 1) Subsequently, the court fined Applicant and discharged the charges conditioned on 12 months of good behavior. (Answer at 1)

While in college, Applicant typically abstained from marijuana while working over the summer. He quit smoking from October 2006 to July 2007 when he was job searching. (GE 3 at 7; Tr. 22) After getting his current job, he resumed using marijuana because he no longer had the pressures of looking for a job. He continued smoking marijuana from January 2007 to September 2008. During this period, he held a security clearance. (GE 3 at 6)

Over the years, Applicant has periodically used other illegal drugs including psilocybin mushrooms on approximately six to eight occasions from September 2000 to June 2006, ecstasy eight times between September 1999 and May 2001, and cocaine three times between January 2002 and February 2003. (Answer at 1) Applicant has also abused prescription drugs including Ritalin six to seven times between December 2003 and May 2004, and Percocet once in 2001. (Answer at 1)

Access to drugs was much more difficult for Applicant in college than in high school. Therefore, he would sometimes return home to buy drugs and transport illegal drugs to college to sell to friends. (Tr. 19) On other occasions, Applicant would visit his old high school friends at their colleges, purchase drugs from them, and bring the drugs to his college. (Tr. 19) Applicant has purchased, transported, and sold marijuana

between 2002 and 2005. (Answer at 1) He purchased and sold cocaine once approximately ten years ago, and he purchased and transported psilocybin mushrooms and ecstasy on eight to ten occasions between 1999 and 2001. While in college, Applicant purchased opium on multiple occasions and transported it on at least one occasion. (Answer at 1; Tr. 16)

Applicant continued using marijuana when he first began his current job because he “didn’t have an idea of . . . where he was going with [his] career,” and had not formulated any long-term goals. (Tr. 16) After working at his present job for approximately a year, he realized that he enjoyed “using [his] technical skills in the service of protecting national security,” and realized that “the only way to continue with that . . . was not to continue using marijuana.” (Tr. 16) Applicant has not used marijuana since September 2008, and has no plans to resume any illegal drug use. (Tr. 16)

Some of Applicant’s friends still use marijuana. Applicant was at a social gathering earlier this year where people were using marijuana. (Tr. 22)

Applicant completed a security clearance application in February 2007. He falsified Section 24a by underreporting the full period and extent of his illegal drug use. (GE 2 at 28) He also falsified Section 24c by intentionally failing to disclose his involvement “in the illegal purchase, manufacture, trafficking, production, transfer, shipping, receiving, or sale of any narcotic, depressant, stimulant, hallucinogen, or cannabis for [his] own intended profit or that of another.” (GE 2 at 29; Answer to Amended SOR at 2)

Applicant also provided false information to an authorized investigator from the Office of Personnel Management, during an interview in September 2007, when he deliberately minimized the extent of his marijuana use and deliberately omitted his illegal use of cocaine ecstasy, opium, and prescription drugs. (Answer to Amended SOR at 2)

Applicant did not disclose this information on his security clearance application because he was embarrassed. (Tr. 17) Since then, he has “come to realize . . . that the government’s interest in openness and truthfulness on the application . . . outweighs [his] personal embarrassment.” (Tr. 17) Consequently, when he completed a security clearance application in 2010, he listed all of the information that he excluded from his 2007 application and interview.

Since beginning work with his current employer, Applicant has steadily received promotions and raises. (Tr. 28) He is now a senior developer. According to Applicant’s supervisor, he “is in the top 2-3% [of the company’s employees] in terms of integrity, trustworthiness, and respect for customer mission,” and “has shown exemplary judgment in all matters related to operational security, data security, and documentation of potential for security issues.” (AE A)

Applicant is active in the community. He volunteers with a local organization that serves children, and participates in outdoor activities such as trail cleaning approximately once per year. (Tr. 30)

Policies

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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.”

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 security clearance.

Analysis

Guideline H, Drug Involvement

Under this guideline, “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). Applicant has an extensive history of drug involvement including using and dealing illegal drugs, and abusing prescription drugs. Some of his illegal drug use occurred while he possessed a security clearance. AG ¶¶ 25(a), “any drug abuse,” 25(c), “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia,” and 25(g), “any illegal drug use after being granted a security clearance,” apply.

Applicant’s heaviest level of drug use occurred when he was in college, approximately eight years ago. Applicant has not used any illegal drugs or abused any prescription drugs in four and a half years. Conversely, the positive security inference based upon passage of time since Applicant last abused drugs is offset somewhat by the fact that he possessed a security clearance during part of the period when he was abusing drugs, and the fact that he was at a social occasion this past year where some friends were smoking marijuana.

Applicant testified credibly and contritely about his irresponsibility of using drugs while possessing a security clearance and about his decision to stop abusing drugs. Also, he is an exemplary employee and is active in the community. Consequently, the passage of time, when considered with these factors, is sufficient to outweigh the facts that Applicant abused drugs while holding a security clearance, and still has friends who smoke marijuana. AG ¶ 26(a), “the behavior happened so long ago . . . that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment; and AG ¶ 26(b)(3), “an appropriate period of abstinence,” apply.

Guideline E, Personal Conduct

The security concern under this guideline is as follows:

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.

Applicant’s falsifications on his 2007 security clearance application and during his 2007 security clearance interview trigger the application of AG ¶¶ 16(a), “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . .;” and 16(b), “deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.”

Applicant disclosed the omissions without confrontation on his security clearance application completed in 2010. Although Applicant’s truthful disclosures constitute a good-faith effort to correct the original falsifications, the truthful disclosures were not prompt because Applicant provided them three years after the original falsifications. Consequently, AG ¶ 17(a), “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts,” only applies partially.

Because of Applicant’s correction of his 2007 omissions, the full extent of his drug involvement is now known. Consequently, this information no longer has the potential to create a vulnerability to exploitation, manipulation, or duress. AG ¶ 17(e), the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress,” 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.

Applicant's drug abuse was heavy and extended to dealing drugs. Also, he used drugs for approximately 18 months after getting a clearance. The nature and seriousness of this conduct was compounded by Applicant's falsifications during the investigative process in 2007. Under these circumstances, the fact that his heaviest use occurred when he was an immature youth has minimal probative value.

Approximately four and a half years have passed since Applicant last abused illegal drugs. Six years have passed since Appellant's falsifications and more than two years have passed since he voluntarily disclosed them. Also, during the period he has been drug-free, he has excelled on the job and has been active in his community. Under these circumstances, I conclude that the presence of rehabilitation sufficiently outweighs the nature and seriousness of the misconduct such that the likelihood of its recurrence is minimal. Applicant has mitigated the security 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, Guideline H:	FOR APPLICANT
Subparagraphs 1.a-1.n:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.c:	For Applicant
Subparagraphs 2.d-2.e:	WITHDRAWN

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.

MARC E. CURRY
Administrative Judge