



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 11-05259
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: *Pro se*

January 12, 2012

Decision

MALONE, Matthew E., Administrative Judge:

Applicant used marijuana, at times frequently, when he was in college and for about 18 months after he graduated. He occasionally purchased small amounts of marijuana for his personal use during that time. In the past 18 months, Applicant has abstained from any illegal drug use, he has changed his personal and professional circumstances for the better, and he sufficiently demonstrated an intent not to use drugs in the future. Based upon a review of the pleadings and exhibits, Applicant’s request for a security clearance is granted.

On January 24, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his job with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant interrogatories¹ to clarify or augment information in the background

¹ Authorized by DoD Directive 5220.6 (Directive), Section E3.1.2.2.

investigation. After reviewing the results of the background investigation and Applicant's responses to the interrogatories, DOHA adjudicators were unable to make a preliminary affirmative finding² that it is clearly consistent with the national interest to allow Applicant access to classified information. On June 22, 2011, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which, if established, raise security concerns addressed at Guideline H (Drug Involvement) of the adjudicative guidelines³ (AG).

On October 3, 2011, Applicant responded to the SOR through a notarized statement and requested a decision without a hearing. On November 3, 2011, Department Counsel issued a File of Relevant Material (FORM)⁴ in support of the Government's preliminary decision. Applicant received the FORM on November 14, 2011, and was given 30 days to file a response to the FORM. On December 8, 2011, Applicant responded to the FORM by submitting an eight-page memorandum and four enclosed exhibits. His submission was included in the record without objection. The case was assigned to me on January 3, 2012.

Findings of Fact

Under Guideline H, the Government alleged that Applicant used marijuana from April 2006 until July 2010 (SOR 1.a), and that he has purchased marijuana (SOR 1.b). In response to the SOR, Applicant admitted, with explanations, both SOR allegations. In addition to the facts established through his admissions, I have made the following findings of fact.

Applicant is 26 years old and works for a defense contractor as a logistics support analyst, a position that requires a security clearance. He has worked for his current employer since November 2010. From July 2004 until December 2008, Applicant attended a college in the southeastern United States, where he received a bachelor of science degree. From 2007 until he was hired by his current employer, Applicant held part-time and full-time jobs in a variety of fields unrelated to his current career. He also was unemployed several times during that period. Applicant is now engaged to be married to a woman whom he listed in his eQIP as a cohabitant. (FORM Items 4 and 5; Response to FORM)

When Applicant submitted his eQIP, he disclosed that he had used marijuana between 2006 and 2010. More specifically, Applicant averred that, when he was in college between April 2006 and January 2009, he smoked marijuana between four and

² Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

³ The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006). Pending official revision of the Directive, they take precedence over the guidelines listed in Enclosure 2 to the Directive.

⁴ See Directive, Enclosure 3, Section E3.1.7. The FORM included six documents (Items 1 - 6) proffered in support of the Government's case.

ten times weekly, estimating that his total use was about 700 times during that period. Applicant further stated that he stopped using marijuana between January 2009 and June 2009. However, after he graduated, he used marijuana between three and four times weekly between June and September 2009, estimating his total use was between 36 and 48 times during that period. From September 2009 until July 2010, Applicant stated he used marijuana once or twice daily between five and seven days weekly, for an estimated total of 400 times before his last use. Applicant also disclosed that he bought small amounts of marijuana for personal use. (FORM Item 5)

Applicant passed a drug screening when he was hired by his current employer. He is subject to random drug screening, but he has not tested positive for any banned substance since he started his current job. (FORM Item 6; Response to FORM)

Applicant attributed his drug use until January 2009 to immaturity while he was in college with no responsibilities. After college, he claimed he used marijuana to help him cope with his inability to find suitable employment, which, combined with the financial strain of his student loans coming due, created a lot of stress. Applicant also averred that, in 2009, his father and stepmother were in the throes of a contentious divorce. Because of his employment difficulties, Applicant and his girlfriend had to live with his parents for a time, and he was forced to witness the deterioration of their marriage and the adverse effects it had on his entire family. This caused additional stress that he tried to ease through frequent marijuana use. (Id.)

Applicant also averred he now knows his use of marijuana was wrong despite the reasons he used it. He decided to stop his use of marijuana in 2010 so that he could adopt a more responsible, productive lifestyle for him and his fiancée. Applicant is in a stable personal relationship, and he no longer associates with people who use illegal drugs. He has moved to a different part of the country to live and work, and he is wholly removed from his previous social, work, and family environments. (FORM, Items 4 - 6; Response to FORM) Applicant also submitted a notarized statement of intent not to use illegal drugs with the understanding that doing so will result in the loss of his clearance. (Response to FORM, Enclosure 4) Applicant has also established a positive reputation at work for being conscientious, reliable, dedicated, and mature. His supervisors and co-workers recommend him for a position of trust because of his integrity and honesty. (Response to FORM, Enclosures 1 - 3)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

⁵ Directive. 6.3.

(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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁶ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.⁷ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.⁸

Analysis

Drug Involvement

The Government presented sufficient information to show that Applicant used marijuana extensively from 2006 until July 2010. The Government's information also established that Applicant purchased small amounts of the drug for his personal use during that period. These facts raise a security concern addressed in AG ¶ 24 as follows:

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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.

More specifically, available information requires application of the disqualifying conditions listed at AG ¶ 25(a) (*any drug abuse*) and AG ¶ 25(c) (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*).

By contrast, the mitigating conditions at AG ¶ 26(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 AG ¶ 26(b) (*a demonstrated intent not to abuse any drugs in the future, such as: (1) dissociation 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;*) must be considered here.

Applicant stopped using drugs about four months before he was hired by his current employer. His use began through commonplace college behavior, but continued after graduation until he decided to adopt a more responsible lifestyle. Also, he has changed his personal and professional circumstances for the better, and he is no longer subject to the same social or family influences that were present when he used marijuana. Applicant has been subject to random drug screening with no positive results since he passed a drug test when he was hired by his current employer. Finally, Applicant submitted a notarized statement averring that he will not use illegal drugs in the future, and that he understands he will lose his clearance if he does so. All of the information about Applicant's change of circumstances and his future intent regarding illegal drug use supports a conclusion that Applicant is not likely to engage in such conduct again. The mitigating conditions at AG ¶ 26(a) and AG ¶ 26(b) apply, and Applicant has mitigated the security concerns about his illegal drug use.

Whole-Person Concept

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guideline H. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 26 years old and presumed to be a mature, responsible adult. He is well educated and is now employed in a professional circumstance for the first time since he left college. Three supervisors from his place of work speak highly about his integrity and overall trustworthiness. The circumstances surrounding Applicant's use of drugs are no longer present. Applicant's maturity and reliability are further demonstrated by the detailed candor with which he answered the pertinent questions in his security clearance application. A fair and commonsense assessment of all available information bearing on Applicant's past and current circumstances shows that Applicant is not likely to engage in future conduct that will raise doubts about his ability to protect the Government's interests as his own.

Formal Findings

Formal findings 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.b: For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge