



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



In the matter of:)
)
) ISCR Case No. 11-05766
)
)
Applicant for Security Clearance)

Appearances

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

05/31/2012

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and plea ding, eligibility for access to classified information is denied.

Statement of the Case

On January 21, 2011, Applicant submi tted an Electronic Questionnaire for Investigations Processing (e-QIP) for his em ployment with a defense contractor. (Item 5) On February 28, 2012, the Defense Offi ce of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns for an allegation of drug involvement for marijuana use from May 2004 until September 2010 (Item 1). 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).

The SOR was sent to Applicant on February 28, 2012 (Item 2). He responded on March 16, 2012 (item 3), admitting the alle gation, and requesting a decis ion on the record (Item 4). Department Counsel s ubmitted the Government’s written case on

March 26, 2012. Applicant received a complete file of relevant material (FORM) on March 29, 2012, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. He provided additional information on April 26, 2012. The case was assigned to me on May 16, 2012.

Findings of Fact

Applicant admitted the allegation under Guideline H. I carefully reviewed the case file and the pleadings, and make the following findings of fact.

Applicant is a single 25-year-old college graduate who has been an architecture draftsman for a defense contractor since December 2010 (Item 5). Applicant noted in response to the question concerning illegal drug use on the security clearance application that he used marijuana from May 2004 until September 2010. He further stated that his use was infrequent (a couple of times a year) except from May to August 2005, when it was weekly. He admits to using marijuana several dozen times over six years. He admits to using marijuana three times in June, July, and September 2010. He was only a user and never a purchaser of the marijuana. (Item 5 at 39)

On February 11, 2011, a security investigator asked Applicant to clarify his statements on the security clearance application concerning drug use. Applicant admitted using marijuana during senior week of high school. He admitted using marijuana weekly in the summer of 2005 with high school friends. During his first two years of college (2004/2005), he used marijuana 10 or 15 times a year. He did not purchase the marijuana. It was provided by his high school and college friends. During his last two years of college (2007/2009), he used marijuana about three times a year at parties. He did not purchase the marijuana. He did not use marijuana in the summer of 2008, but did use it a few times after college in the summer of 2009. His last use of marijuana was in September 2010. He stated that he does not have a problem with drugs, and his drug use is only recreational. He further stated that he does not "foresee any increase in his use of marijuana from about two to four times a year if at all. He is not certain what his future use will be." (Item 6 at 10-11)

In his response to the SOR, Applicant admitted his marijuana use with varying frequency from May 2004 until at least September 2010. He noted increased use from May 2004 until 2006, but decreased use until his last use in September 2010. He used marijuana in college because of the college environment of freedom. He did not become dependent on marijuana, did not require counseling, or need rehabilitation. He maintained a good academic standard and graduated magna cum laude. He admitted using marijuana after college, but at a dramatically decreased level of frequency. He became more mature and was in a professional environment. (Item 4)

In response to the FORM, Applicant stated that his use of marijuana was infrequent and happened under such circumstances that it is unlikely to recur. The majority of his drug use was in college. While it continued after college, he did it in a professional environment that was lax on drug use. He told the security investigator he was not certain of his future use of marijuana because he did not know what his future

would bring. In his response to the FORM, he again did not clearly state that he would not use drugs in the future. He again noted that “I do not know what my future holds.” He noted that he has not disassociated from his drug-using friends because they are his closest friends that he has known since before he used marijuana. He considers his loyalty to them more important than whether they decide to recreationally use illegal drugs. If he abandoned his friends simply because of drug use, he would not show he was reliable or trustworthy. He stated he has avoided the environment where drugs are used, and he signed a statement of intent with automatic revocation of clearance for use of illegal drugs. He has not completed a drug treatment program because he does not have a problem with drugs, nor is he dependent on marijuana. (Response to FORM, Letter, dated April 26, 2012)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the Administrative Guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching 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 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.” 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 applicant or proven by Department Counsel. . .” The applicant has the 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 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.

Analysis

Guideline H, Drug Involvement

The 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 mood and behavior altering substances, and include those listed in the Controlled Substances Act of 1970. Marijuana is listed in the act as an illegal drug. Drug abuse is the illegal use of a drug or the use of a legal drug in a manner that deviates from approved medical direction (AG ¶ 24).

Applicant admitted using marijuana in high school, college, and after college from 2004 until September 2010. He received the marijuana from friends. Applicant's marijuana use raises Drug Involvement Disqualifying Conditions AG ¶ 25(a) (any drug use); and AG ¶ 25(c) (illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution).

I considered Drug Involvement Mitigating Conditions AG ¶ 26(a) (the behavior happened so long ago, was so infrequent, or happened under such unusual 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). These mitigating conditions do not apply.

Applicant admits using marijuana with varying frequency for about six years. There were no unusual circumstances leading to the drug use. He was a young high school and college student who admits using marijuana because of the opportunity when it was provided by friends. While there is no "bright line" rule for determining when conduct is recent or sufficient time has passed since the incidents, a determination whether past conduct affects an individual's present reliability and trustworthiness must be based on a careful evaluation of the totality of the evidence. If the evidence shows a significant period of time has passed without evidence of drug involvement, there must be an evaluation whether that period of time demonstrates changed circumstances or conduct sufficient to indicate a finding of reform or rehabilitation.

Applicant has not used illegal drugs for almost 20 months, since September 2010. At that time, he was seeking employment in his field with a defense contractor where drug use was not tolerated. He started with his defense contractor employer in

December 2012. He is now in an environment where drug use is prohibited. Prior to that, he claims to have been in an environment where drug use was tolerated. There is no evidence that he stopped associating with drug using friends. In fact, he admits he will continue to associate with these friends. There is no clear indication of his intent not to use drugs in the future. He told the security investigator that he may use drugs in the future. In response to the FORM, he explained his response to the security investigator, but he did not clearly state that he would not use illegal drugs in the future. His answers to the security investigator, his response to the SOR, and his response to the FORM are not sufficient information of a change of circumstance showing he has reformed and will no longer use illegal drugs. Applicant has failed to present sufficient information to overcome the security concern for his use of illegal drugs. Guideline H is decided against Applicant

Whole-Person Analysis

Under the whole-person concept, the administrative judge evaluates the applicant's conduct and all of the circumstances. An 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 a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant has not established that he is trustworthy, reliable, and exercises good judgment. He used marijuana as a high school and college student, and after receiving his degree until he was seeking employment with a defense contractor. His last use of marijuana was approximately 20 months ago. He still associates with those that used marijuana with him, and he did not state his clear intent not to use drugs in the future. He did not establish changed circumstances to show he has reformed and has been rehabilitated. He did not provide sufficient evidence to establish that he should be trusted with access to classified information. The record evidence leaves me with questions about Applicant's eligibility and suitability for a security clearance. For all these reasons, I find that Applicant has not mitigated drug involvement 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:	AGAINST	APPLICANT
Subparagraph 1.a:	Against	Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge