



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



In the matter of:)	
)	
)	ISCR Case No. 11-06479
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Marc G. Laverdiere, Esq., Department Counsel
For Applicant: *Pro se*

02/29/2012

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the drug involvement security concern related to his August 2010 marijuana possession arrest, but he failed to mitigate the personal conduct security concern for failing to disclose it, as required, on his security clearance application. Also, he failed to disclose the marijuana possession arrest when a security clearance investigator asked him about it during an interview. Clearance is denied.

Statement of the Case

On November 7, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines Guideline H, drug involvement, and Guideline 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 as of December 1, 2006.

DOHA received Applicant's answer on November 22, 2011, admitting all of the allegations and requesting a hearing. On December 21, 2011, the case was assigned to me. On January 6, 2012, a notice of hearing was issued scheduling the case for January 31, 2012. At the hearing, I received into evidence three Government exhibits marked as Government Exhibits (GE) 1 through 3, and three Applicant Exhibits, marked as Applicant Exhibits (AE) A through C. Also, I considered Applicant's testimony. The transcript was received on February 7, 2012.

Findings of Fact

Applicant is a 29-year-old single man. He has a high school diploma and has taken some college courses. Since 2008, he has been working as a contract file clerk in the law library of a federal agency. He is well respected by his supervisor and the contractor's client. (AE B, C) He has held a top secret clearance since 2005. (Answer at 1)

One night in July 2010, while driving home from a party, Applicant was stopped by the police after running a red light. The officer detected the smell of marijuana, then proceeded to search the car, discovering a bag of marijuana under the passenger seat. (Tr. 28-29) Subsequently, Applicant was arrested and charged with possession of marijuana. (Tr. 22)

Applicant contends the marijuana was not his, and that he was unaware any was in his car. Also, he testified that he was at a party earlier that evening, and he had given the car keys to the party's host so he could "make runs to the store" for refreshments. (Tr. 32) Because other cars were blocked in, it was most convenient for the host to use Applicant's car. (Tr. 32)

On September 30, 2010, Applicant pleaded not guilty to the marijuana charge and guilty to the charge for running the red light. The court then dropped the marijuana charge. Two months later, the record was expunged. (AE A)

On August 4, 2010, Applicant completed a security clearance application. In response to Section 22e requiring applicants to disclose if they have ever been charged with any offenses related to alcohol or drugs, Applicant answered, "no," omitting the July 2010 marijuana charge. Applicant testified that he misunderstood the question, asserting that he "was just confused with the terms of being arrested, being convicted, and being charged" because he had never been arrested before. (Tr. 24, 30) Approximately four months before Applicant was arrested and charged with drug possession, he was arrested for driving with a suspended license. (GE 1 at 35) He listed this arrest on his security clearance application.

Applicant met with an authorized DoD investigator on September 9, 2010. He was asked if he had been arrested or charged any other time than when he was charged for driving with a suspended license. Applicant answered, "No." (Tr. 39, 40; GE 2 at 3)

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 E, Personal Conduct

Under this guideline, “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.” Moreover, “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.” (AG ¶ 15) Applicant’s failure to disclose his drug-related charge on his security clearance application, as required, and his failure to disclose it to an investigator, when asked about his arrest history during a personal subject interview, raise the issue of whether the following disqualifying conditions under AG ¶¶ 16 apply:

- (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
- (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 contends he misinterpreted the question regarding drug-related charges or arrests because he had never been arrested before, when in fact, he had been arrested approximately four months earlier. I conclude that Applicant’s failure to testify truthfully regarding the first arrest undermines his testimony that the omission of

the drug-related arrest from his security clearance application was unintentional. AG ¶¶ 16(a) and 16(b) apply without mitigation.

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). A police officer, upon stopping Applicant after running a red light, smelled marijuana in Applicant’s car, searched it, and discovered a bag of marijuana under the passenger seat. Applicant’s testimony that the marijuana did not belong to him is not credible given his untruthful testimony regarding his failure to list the charge on his security clearance application. AG ¶ 25(c), “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia,” applies.

Nevertheless, the fact that Applicant was arrested and charged with illegal drug possession on one occasion - a charge that was later dropped - constitutes scant evidence of a drug involvement problem. AG ¶ 16(a), “the behavior happened so long ago, was so infrequent, or happened under such circumstances that it unlikely to recur,” applies. Applicant has mitigated the drug involvement security concern.

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.

Any favorable inference that one can extrapolate from Applicant’s good work record is outweighed by his falsifications on his security clearance application and to the investigator. Upon considering this case in the context of the whole-person concept, I conclude Applicant has failed to mitigate the security concern.

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 E:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For 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.

MARC E. CURRY
Administrative Judge