



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



In the matter of:)
)
) ISCR Case No. 11-07402
)
Applicant for Security Clearance)

Appearances

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

01/09/2013

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline H, drug involvement, and Guideline E, personal conduct. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On June 15, 2012, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing security concerns under 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 effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant's answer to the SOR was undated. He elected to have his case decided on the written record. On August 29, 2012, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant and it was received on October 10, 2012. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not provide additional information. The case was assigned to me on November 29, 2012.

Procedural Issues

Department Counsel moved to amend subparagraph 2.b of the SOR, by substituting "March 7, 2011" for "February 23, 2010, due to a typographical error and to conform with the documents. There was no objection by Applicant, and the motion is granted.

Findings of Fact

In Applicant's answer to the SOR, he admitted all of the allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 26 years old. He is not married and has no children. He graduated from high school in 2004. He graduated from college with an engineering degree in December 2008. He has been attending classes at a technical institution since May 2009 to the present, but not every term. He has worked for a federal contractor since March 2009. He has held a security clearance since July 2009.

Applicant completed a security clearance application (SCA) on June 22, 2009. On March 7, 2011, Applicant completed another SCA and answered "no" to Section 23a asking if he had illegally used a control substance in the last seven years. In response to Section 23b, asking if he had ever used a controlled substance while possessing a security clearance, he answered "no."

During Applicant's April 2011 security interview he admitted he used marijuana in June 2009, in December 2009, and in November 2010. The last two uses occurred while Applicant possessed a security clearance. Each occasion he used marijuana was with friends and the reason was he wanted to try it. Applicant admitted during his interview that he intentionally omitted his marijuana use on his SCA because he did not want it to appear that his isolated drug uses of marijuana had been occurring for a long period of time. He indicated he was not trying to hide his drug use. He does not intend to use drugs in the future.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

disqualifying conditions and mitigating conditions, which are used 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 overarching 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline H, Drug Involvement

AG ¶ 24 expresses the security concern pertaining to drug involvement:

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 defined as mood and behavior altering substances, and include: (1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances; Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

I have considered the disqualifying conditions under AG ¶ 25 and conclude the following have been raised:

- (a) any drug abuse; and
- (g) any illegal drug use after being granted a security clearance.

Applicant used marijuana three times from June 2009 to November 2010. Two of the uses occurred while he possessed a security clearance. I find both of the above disqualifying conditions apply.

I have considered all of the mitigating conditions under AG ¶ 26. The following three are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent or happened under circumstances that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs are used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation; and
- (d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant completed a SCA in June 2009. Questions on the SCA pertain to an applicant's prior drug involvement. Applicant was on notice when he completed the SCA that use of illegal drugs was a concern of the government. He was granted a security clearance in July 2009. He then used marijuana in December 2009 and November 2010. His actions cast doubt on his reliability, trustworthiness and good judgment. I find AG ¶ 23 (a) does not apply. In Applicant's security interview he stated he does not intend to use drugs in the future. There is insufficient evidence to conclude he has disassociated himself with drug-using associates or contacts, that he has changed or avoided an environment where drugs are present, or that he has signed a statement of intent with automatic revocation of clearance for any violation. According to Applicant's security interview his last use of illegal drugs was in November 2010, a period of about two years. Without further information I cannot conclude this is a sufficient period of abstinence. I find AG ¶ 26(b) does not apply. There is no evidence related to AG ¶ 26(d), therefore it does not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern about personal conduct:

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.

I considered the disqualifying conditions under AG ¶ 16 that could raise a security concern and conclude the following has been raised:

(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.

Applicant deliberately failed to disclose his marijuana use on his March 2011 SCA. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant admitted that he intentionally did not disclose his illegal drug use because he did not want it to appear that his isolated uses of marijuana had been occurring for a long period of time. Applicant had a duty to answer all of the questions on his SCA truthfully. The concealment of this information is a cause of concern. He could have easily disclosed he used illegal drugs on three occasions which would have provided the extent of his drug use to the government. He did not disclose this information until his security interview. I find none of the above mitigating conditions apply.

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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 26 years old. He completed a SCA in June 2009. Completion of the SCA put him on notice that the use of illegal drugs is a security concern for the government. Shortly after completing the SCA, and after being granted a security clearance he used marijuana. When he was required to complete another SCA in March 2011, he intentionally failed to disclose his marijuana use. Applicant was trusted with a security clearance and he failed to act responsibly by using marijuana. To exacerbate his situation he falsified answers on his March 2011 SCA. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline H, drug involvement, and Guideline E, personal conduct.

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
Subparagraphs 1.a-1b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge