



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



In the matter of:)
)
) ISCR Case No. 11-09172
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: *Pro se*

01/11/2013

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline H, drug involvement. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On August 15, 2012, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement. DoD acted under Executive Order (EO) 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) implemented by the DoD on September 1, 2006.

Applicant answered the SOR on September 7, 2012, and requested a hearing. The case was assigned to me on October 15, 2012. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 13, 2012, and the

hearing was convened as scheduled on December 6, 2012. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. Department Counsel's exhibit index is marked as Hearing Exhibit (HE) I. Applicant testified but offered no documentary evidence. He also showed me several original photographs and diplomas at the hearing, including pictures of his daughter and his brother who is a colonel in the Marine Corps. These items were not included in the record but were described by me. DOHA received the hearing transcript (Tr.) on December 19, 2011.

Findings of Fact

In Applicant's answer to the SOR, he admitted both the allegations under Guideline H. After a thorough and careful review of the evidence submitted, I make the following findings of fact.

Applicant is 38 years old. He is currently engaged, and has one child from a previous marriage who lives with him. He has a bachelor's and a master's degree. Since 2005, he has worked for a defense contractor. He has no military service and has held a security clearance since 2005.¹

Applicant's admitted using marijuana on approximately five occasions from October 2007 to May 2010 while holding a security clearance (as alleged in SOR ¶¶ 1.a – 1.b). Applicant claims he never used marijuana before 2007. He testified that in 2007, he used marijuana four times in a ten-to fourteen-day period. He stated that these uses were not preplanned, but came about when he was at several parties at a friend's apartment. He was given the marijuana and has never purchased it. His most recent use came in 2010 when he again attended a party at a friend's house. He ate some baked goods at the party. Apparently, someone had baked marijuana into the products. Applicant did not know this at the time he ate the baked goods. Later, he felt the effects of something and a friend told him that there was marijuana in the baked goods. He stated that he no longer associates with the person who put the marijuana in the baked goods. When interviewed by a defense investigator in April 2011, he failed to bring up this circumstance concerning his most recent marijuana use. He told the investigator that he used marijuana "in a social setting, five or six times between October 2007 and May 2010." He provided no other details.²

Applicant also testified that he now lives a healthy lifestyle. He wants to be a good example for his daughter who began living with him in 2009. He also testified that he would like it noted that he voluntarily admitted his marijuana use during his security clearance upgrade review. He believes that without his honest admissions, his past use

¹ Tr. at 6-7, 19, 25-27; GE 1.

² Tr. at 28-31; GE 2, 3.

would have remained undisclosed. He has not sought out or received any drug counseling.³

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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.

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 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 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

³ Tr. at 32-34, 36; GE 3.

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.

I have considered all of the evidence in this case and the disqualifying conditions under drug involvement AG ¶ 25, and considered the following relevant:

(a) any drug abuse; and

(g) any illegal drug use after being granted a security clearance.

Applicant used marijuana on a number of occasions. He also used marijuana after being granted a security clearance in 2005. I find the above disqualifying conditions apply.

I have considered all of the evidence in this case and the mitigating conditions under Drug Involvement AG ¶ 26, and considered the following relevant:

(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

(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 were used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant’s use of drugs was frequent and recent (last use May 2010). The period of abstinence is insufficient to demonstrate Applicant’s intent not to use in the future. I am troubled by the fact that he claims he never used marijuana before 2007, but started using after he was granted a security clearance. Additionally, I do not find his testimony about the use involving the marijuana baked goods credible. Applicant failed to bring this version of the facts forward to a defense investigator in April 2011 when the events would have been much clearer in his mind. Therefore, I discount his version of

an unintentional use in 2010. Although he claims to have changed his lifestyle and some friends, he has not convinced me that he has a demonstrated intent not to use marijuana in the future. Moreover, his affirmative decision to use marijuana after receiving a security clearance casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 26(a) does not apply, and AG ¶ 26(b) partially 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.

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 considered Applicant's statement about his changed lifestyle. However, I also weighed that he used marijuana on several occasions, all while holding a security clearance, and as recently as May 2010. Applicant failed to provide sufficient evidence to mitigate the security concerns.

Overall, the record evidence leaves me with questions and doubts about 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.

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-1.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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge