



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



In the matter of:)
)
) ISCR Case No. 11-10546
)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro se*

March 25, 2013

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on May 25, 2011. On October 31, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline H for the Applicant. 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 within the Department of Defense after September 1, 2006.

The Applicant acknowledged receipt of the SOR on November 15, 2012. He answered the SOR in writing on November 16, 2012, and requested a hearing before an Administrative Judge. DOHA received the request on January 8, 2013, and I received the case assignment that same date. DOHA issued a notice of hearing on January 8, 2013, and I convened the hearing as scheduled on February 6, 2013. The Government offered Exhibits (GXs) 1 and 2, which were received without objection.

The Applicant testified on his own behalf and submitted Exhibit (AppX) A, which was received without objection. DOHA received the transcript of the hearing (TR) on February 15, 2013. I granted the Applicant's request to keep the record open until March 6, 2013, to submit additional matters. On February 11, 15, and 19, of 2013, he submitted Exhibits B, C, and D, respectively, which were received without objection. The record closed on March 6, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of 21 U.S.C. Chapter 13, Subsection 1, Part B, Sections 802 and 812. The request was granted. The request, and the attached documents, were not admitted into evidence, but were included in the record.

Findings of Fact

In his Answer to the SOR, the Applicant admitted all the factual allegations of the Subparagraphs of the SOR, without explanations.

Guideline H - Drug Involvement

1.a.~1.c. From about June 2005 until April of 2010, while in high school and then as an undergraduate in college, the Applicant used marijuana about once a month. (TR at page 20 line 6 to page 23 line 19, and page 28 line 20 to page 29 line 4.) During this period he also purchased marijuana on several occasions. (TR at page 29 lines 5~21.) While attending graduate school, the Applicant also used marijuana about five times from about May of 2010 to March of 2011. (TR at page 20 lines 6~11, and page 28 line 20 to page 29 line 4.)

1.d.~1.f. The Applicant also used Psilocybin on one occasion in November of 2007, he used MDMA (Ecstasy) on one occasion, and LSD on two occasions in May of 2010. (TR at page 31 lines 6~15.)

Those the Applicant associated with in high school and in college no longer use illegal substances. (TR at page 26 line 24 to page 27 line 13.) Most recently, in February of 2013, the Applicant subscribed and swore to the following:

1. I have not used marijuana or any other controlled substance since March 2011.
2. I will not use and intend not to use marijuana or any other controlled substance in the future.
3. I understand and agree that any future use of a controlled substance will result in automatic revocation of my security clearance. (AppX A.)

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 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 Paragraph 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. Paragraph 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 Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph 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 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 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.

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

Paragraph 24 of the adjudicative guidelines sets out the security concern relating to Drug Involvement: "Use of an illegal drug . . . can raise questions about an individual's reliability and trustworthiness"

The adjudicative guidelines set out certain conditions that could raise security concerns. Paragraphs 25(a) and 25(c) provide, respectively, that "*Any drug abuse,*" and "*illegal drug . . . purchase,*" may raise security concerns. These are countered, however, by the mitigating conditions set forth in Paragraphs 26(a) and 26(b)(4). Paragraph 26(a) notes that it is mitigating when "*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.*" Here, the Appellant's last marijuana usage occurred about two years ago. Paragraph 26(b)(4) notes that it is mitigating when there is "*a demonstrated intent not to abuse any drugs in the future, such as: (4) a signed statement of intent with automatic revocation of clearance for any violation.*" By a sworn declaration, the Applicant has eschewed any future Drug Involvement. Drug Involvement is found for the Applicant.

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. Under AG Paragraph 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. The Administrative Judge should also consider the nine adjudicative process factors listed at AG Paragraph 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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Those who know the Applicant from academia and in the work place speak most highly of him and aver that he is trustworthy (AppXs B~D.). The record evidence leaves me with no questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these

reasons, I conclude Applicant has mitigated the security concerns arising from his 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola
Administrative Judge