



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 11-13290
)	
Applicant for Security Clearance)	

Appearances

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

04/30/2013

Decision

MALONE, Matthew E., Administrative Judge:

Applicant’s drug use is not recent and not likely to recur. The security concerns raised by his use of illegal drugs are mitigated. His request for a security clearance is granted.

Statement of the Case

On August 11, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (eQIP) to obtain a security clearance required for his job with a defense contractor. After reviewing the completed background investigation, Department of Defense (DOD) adjudicators were unable to find that it is clearly consistent with the national interest for Applicant to have access to classified information.¹

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

On October 17, 2012, the DOD issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed at Guideline H (Drug Involvement).² Applicant timely responded to the SOR and requested a decision without a hearing. On January 3, 2013, Department Counsel issued a File of Relevant Material (FORM)³ in support of the SOR. Applicant received the FORM on January 16, 2013, and was notified that he had 30 days to file a response to the FORM. The record closed after Applicant failed to submit any additional information within the time allowed. The case was assigned to me on April 23, 2013.

Findings of Fact

Under Guideline H, the Government alleged that Applicant used marijuana about twice monthly between January 2008 and July 2011, and that he used cocaine twice between April and June 2011 (SOR 1.a). Applicant admitted these allegations, claiming that he has not used drugs since July 2011. (FORM, Item 4) In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 21 years old and has been offered employment with a defense contractor conditioned on his acquisition of a security clearance. After completing an unrelated summer internship in August 2011, Applicant was unemployed when he submitted his eQIP. Since he graduated from college in May 2011, he has been living with his mother. Applicant's summer internship was located near his mother's home and his prospective employment is located in another state. Neither is near where he attended college. (FORM, Items 5 and 6)

In his eQIP, Applicant disclosed that he used marijuana about twice each month while he was in college. Between April and June 2011, he also used cocaine twice. He never bought or sold the drugs he used, as they were provided by others in social settings. Applicant has not used illegal drugs since June 2011. In his September 2011 subject interview, and in his notarized response to the SOR, he stated he no longer uses illegal drugs and does not intend to use drugs again. (FORM, Items 1 and 4 - 6)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁴ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole-person" concept, those factors are:

² See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

³ See Directive, Enclosure 3, Section E3.1.7. The FORM included six documents (Items 1 - 6) proffered in support of the Government's case.

⁴ Directive. 6.3.

(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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOHA based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.⁶ If the Department Counsel meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁷

Because no one is entitled to a security clearance, an applicant bears a heavy burden of persuasion to establish that it is clearly consistent with the national interest for the applicant to have access to protected information.⁸ A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.⁹

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ Directive, E3.1.14.

⁷ Directive, E3.1.15.

⁸ See *Egan*, 484 U.S. at 528, 531.

⁹ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

Analysis

Drug Involvement

Applicant used marijuana twice monthly between 2008 and July 2011. He also used cocaine twice between April and June 2011. This information raises a security concern articulated at AG ¶ 24, as follows:

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.

(a) 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;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

More specifically, available information requires application of the disqualifying conditions at AG ¶ 25(a) (*any drug abuse (see above definition)*).

By contrast, Applicant has not used drugs for almost two years, and he no longer lives, and he will not be working, near the college town where his drug use occurred. His professional circumstances have changed, in that, his pending employment depends on his continued good conduct.

This information supports application of the following AG ¶ 26 mitigating conditions:

(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;

(b) a demonstrated intent not to abuse any drugs in the future, such as: (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence.

Whole-Person Concept

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guideline H. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). All available information suggests Applicant's involvement with illegal drugs can be ascribed to youthful

indiscretion and experimentation. His circumstances have changed and there has been a sufficient period of abstinence from which to conclude Applicant is not likely to again use drugs. A fair and commonsense assessment of this record shows the Government's security concerns are mitigated.

Formal Findings

Formal findings 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

Conclusion

In light of all available information, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge