



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 11-14059
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

09/05/2013

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns raised by his use of illegal drugs and his misuse of prescription drugs between 2005 and 2011. He no longer interacts with friends with whom he engaged in this misconduct, and he now has a personal and professional lifestyle conducive to continued abstinence from illegal drug use. Clearance is granted.

Statement of the Case

After reviewing the results of Applicant’s background investigation, Department of Defense (DOD) adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant’s request for access to classified information.¹ On

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

November 9, 2012, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guideline² for drug involvement (Guideline H).

Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned to me on June 21, 2013, and I convened a hearing on July 16, 2013. Department Counsel presented Government Exhibits (Gx.) 1 and 2, which were admitted without objection. (Tr. 19 - 25) Applicant testified. With his Answer, Applicant provided six documents, which have been included in the record without objection.³

The record closed on July 18, 2013, when Applicant and Department Counsel stipulated to facts about Applicant's claims that he had disclosed adverse information to another Government agency. An email documenting the parties' agreement on that issue is included in the record as Hearing Exhibit (Hx.) 1. DOHA received the transcript of hearing (Tr.) on July 31, 2013.

Findings of Fact

Under Guideline H, the Government alleged that Applicant used marijuana between 2005 and May 2011 (SOR 1.a); that he used Hydrocodone about 10 to 15 times between 2005 and 2008 (SOR 1.b); that he used Oxycontin once in 2007 (SOR 1.c); that he used Xanax twice in 2006 and 2007 (SOR 1.d); that he purchased marijuana in 2009 (SOR 1.e); that he purchased Hydrocodone between 2005 and 2009 (SOR 1.f); that he purchased Xanax (SOR 1.g); that he purchased Oxycontin in 2007 (SOR 1.h); and that between 2007 and 2010, he traded and gave away to friends and classmates some of the Adderall he had been prescribed (SOR 1.i). Applicant admitted all of the allegations. In addition to his admissions, I make the following findings of fact.

Applicant is 24 years old. After graduating from college in 2010, he worked selling real estate. In August 2011, he was hired as an inventory specialist by his current employer, a defense contractor, who is sponsoring his request for a security clearance. When Applicant submitted his eQIP, and when he was interviewed by an investigator during his background investigation, he disclosed the information that is alleged in the SOR. He also confirmed that information when he responded to interrogatories from DOD adjudicators in October 2012. (Gx. 1; Gx. 2)

Applicant's use of marijuana between 2005 and 2011 was sporadic. He last used marijuana in May 2011 when he met some friends for an evening out. Those friends no longer live near Applicant and he has no ongoing contact with them. Before May 2011, he used marijuana in the fall of 2010 under similar circumstances. On one occasion in

² The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

³ Tr. 11 - 17.

about 2009, Applicant purchased a small amount of marijuana for personal use. (Answer; Gx. 2; Tr. 40 - 42, 53 - 54)

While he was in high school, Applicant participated in trap shooting. In 2006, exposure to repeated shotgun blasts caused him to have ringing in his ears that would not go away. Applicant read on line that Xanax, a prescription medication used to treat anxiety and panic disorders, would help alleviate his symptoms. On two occasions, he bought and used Xanax without a prescription. (Answer; Gx. 1; Gx. 2; Tr. 42 - 43)

Also in high school and in college, Applicant was engaged in weight lifting and other physical activities through which he occasionally incurred minor injuries. Applicant was prescribed various pain medications from time to time. However, between 2005 and 2008 when his prescription lapsed, he obtained from friends between 10 and 15 doses of Hydrocodone, a prescription pain medication containing codeine. (Answer; Gx. 1; Gx. 2; Tr. 43 - 44, 58 - 59, 69)

On New Years Eve 2007, Applicant and a friend split the cost of one dose of Oxycontin, a powerful prescription pain killer. They ground up the pill and snorted it. (Answer; Gx. 1; Gx. 2; Tr. 44 - 45)

Around the time he graduated from high school or started college in 2007, Applicant was prescribed Adderall for attention deficit disorder (ADD). This is a drug containing mild amounts of amphetamine, a controlled substance. While in college, Applicant occasionally provided his own Adderall to fellow students, who would use the medication for its stimulative effect during exams. He also received Adderall from others when his own prescription ran out. Applicant has not used Adderall since he left college. (Answer; Gx. 1; Gx. 2; Tr. 34 - 40)

Applicant submitted with his Answer a notarized statement attesting to his intent to abstain from any and all illegal use of drugs. In that statement, he consented to the immediate revocation of his clearance if he did not so abstain. When Applicant was hired by his current employer, he was required to submit to urinalysis testing. He tested negative on August 1, 2011. Although company policy requires random workplace drug testing, Applicant has not yet been tested. (Answer; Tr. 32 - 33, 49 - 50)

As of his hearing, Applicant had applied for Navy Officer Candidate School (OCS) in the hopes of becoming a Naval aviator. Applicant disclosed to the Navy all of the same information about his drug involvement as was contained in his eQIP for an industrial security clearance. For purposes of allowing his application and eligibility to compete for an OCS training slot, the Navy granted him a waiver of his prior drug use. (Tr. 29 - 31, 59; Hx. 1)

Most of Applicant's drug use occurred in his home town when he returned from college. To the extent his drug involvement occurred where he now lives and works, the people with whom he used drugs there have moved away. He is fully engaged in his defense contractor work and his efforts to enter OCS. Personal references at work and

from his college support Applicant's application for a security clearance. He has an excellent reputation in the workplace. His supervisor, his parents, and the company facility security officer (FSO) are all aware of the adverse information at issue here. (Answer; Tr. 55 - 58)

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 (AG). 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:

(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. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.⁶

⁴ See Directive. 6.3.

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

⁶ See *Egan*, 484 U.S. at 528, 531.

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national 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 in favor of the Government.⁷

Analysis

Drug Involvement

Applicant used marijuana between about 2005 and May 2011. He also purchased a small amount of marijuana in 2009. He misused prescription medications between 2005 and 2010. He either obtained medications he had not been prescribed, or he misused his own prescription for Adderall by sharing it with others. 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, information about Applicant’s drug use requires application of the following AG ¶ 25 disqualifying conditions:

(a) any drug abuse (see above definition); and

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

By contrast, Applicant’s last involvement with drugs was in May 2011, when he used marijuana with friends with whom he no longer associates. He has been candid and forthcoming about these facts during his industrial clearance application and in his

⁷ See *Egan*; AG ¶ 2(b).

application for entry into the U.S. Navy. Through his abstinence since May 2011, and as reflected in a notarized statement of intent, Applicant has demonstrated an intent not to use illegal drugs or to misuse prescription drugs in the future.

Available 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; and

(b) a demonstrated intent not to abuse any drugs in the future, such as:
(1) dissociation 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.

On balance, Applicant has mitigated the security concerns raised by his use of marijuana and his misuse of prescription medications.

Whole-Person Concept

I have evaluated the facts and have applied the appropriate adjudicative factors under Guideline H. I also have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 24 years old and presumed to be a mature, responsible adult. He has been candid at all times about adverse information in his background, and he recognizes that he can no longer behave as he did in high school and college. Applicant has an excellent reputation in the workplace, despite the fact that his drug involvement is known to his supervisor and FSO. Given his changed circumstances and his plans for a military career, it is unlikely he will repeat the misconduct that raised concerns about his suitability for access to classified information. A fair and commonsense assessment of available information shows that Applicant has mitigated the security concerns about his drug use.

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
Subparagraphs 1.a - 1.i:	For Applicant

Conclusion

In light of all of the foregoing, 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