



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



In the matter of:)
)
-----) ISCR Case No. 12-00270
)
Applicant for Security Clearance)

Appearances

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

10/25/2013

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under the guidelines for drug use. His eligibility for a security clearance, therefore, is denied.

Statement of the Case

On September 2, 2011, Applicant signed and completed a security clearance application (SCA) in which he admitted the use of illegal drugs and the abuse of a controlled medication. On May 8, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H (Drug Involvement). 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 DOD on September 1, 2006.

In a May 22, 2013, response to the SOR, Applicant admitted all but one of the allegations raised. He chose not to have a live hearing before an administrative judge. On July 6, 2013, the Government submitted a File of Relevant Material (FORM),

containing six attachments, to support the Government's position that allowing Applicant access to classified information is not clearly consistent with the national interest. On August 12, 2013, he responded to the FORM. The case was assigned to me on August 22, 2013. Based on a thorough review of the case file and submissions, I find that Applicant failed to mitigate the Guideline H security concerns. Security clearance is denied.

Findings of Fact

Applicant is a 27-year-old employee of a defense contractor. His present position is unknown, but he began it in September 2011. He received a bachelor's degree in 2008, a master's degree in 2009, and a second master's degree in 2011. He is not married. There is no evidence of military service.

With varying frequency between May 2006 and at least September 2011, Applicant used marijuana. During that period, he also purchased that drug. He used cocaine with varying frequency between about May 2006 and at least April 2011. He used LSD from at least May 2006 until at least May 2007, during which time he purchased the drug from a drug dealer. Applicant purchased and used ecstasy from about May 2006 until about May 2007. From May 2006 until about October 2006, Applicant used psychedelic mushrooms, which he purchased. He also abused the prescription drug Adderall at least once in about October 2006. The majority of Applicant's drug use took place while he was in college, between 2004 and 2009.

Applicant self-identified two particular friends who abused drugs when he was using drugs. One friend has left the country, and Applicant believes this individual has quit using drugs. Applicant has not had contact with him in quite some time. The other acquaintance no longer uses drugs, and Applicant only maintains limited contact with him. The only counseling Applicant has received was with a health care professional when his mother was suffering from cancer. Applicant has begun an exercise regimen and he is presently working on a doctorate degree. He has no present intent to return to drug use. There is scant additional evidence of any professional, social, or lifestyle changes that he has accomplished since quitting drugs and beginning his current employment in September 2011.

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 derived from 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 the applicant may deliberately or inadvertently fail to safeguard 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

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. (AG ¶ 24) “Drugs” are defined as mood and behavior altering substances and include 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 inhalants and other substances. (AG ¶ 24(a)(1-2)) “Drug abuse” is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction. (AG ¶ 24(b))

Here, Applicant admits intermittently using marijuana, cocaine, LSD, ecstasy, and psychedelic mushrooms, as well as abusing Adderall. He also admits purchasing marijuana, LSD, ecstasy, and psychedelic mushrooms. Such facts are sufficient to raise

Drug Involvement Disqualifying Conditions AG ¶ 25(a) (*any drug abuse*) and 25(c) (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*). With disqualifying conditions raised, the burden shifts to Applicant to mitigate related security concerns.

Applicant's drug use from 2006 through September 2009 plateaued during his undergraduate years. He successfully quit abusing LSD, ecstasy, and psychedelic mushrooms in 2007, and he ended a brief flirtation with Adderall abuse in 2006. To his credit, he has continued to abstain from using and purchasing those drugs ever since. His use of marijuana and cocaine, however, continued into 2011.

Applicant's cessation of marijuana occurred in September 2011, the same month he began his current job and completed his SCA. Two years of abstinence can be a significant period in the life of a 27-year-old. It can also be a challenging time for one who has joined the workforce, yet is still living a student's life. Applicant failed to provide additional information, for example, that might tend to establish his more recent drug use was demonstrably infrequent, that he has significantly matured since quitting cocaine and marijuana, or that shows his commitment to his workplace and profession. He similarly failed to offer any comment as to how he quit drugs or whether he has a support system should his desire for drugs return.

Applicant gave no significant information as to any changes in his life and lifestyle that might tend to mitigate concerns regarding his past milieu, where drugs were apparently available, if not tolerated. At most, he provided statements indicating that he now has little to no contact with two identified coeds from his college; no significant comments are made of current contacts he might have with other drug users or dealers, if any. He declined to offer a statement of intent with automatic revocation of clearance should he again be determined to be involved with drugs. He offered no recommendations from peers, community contacts, or professional associates addressing his accomplishments, community involvement, or qualifications for maintaining a security clearance. The case file in its present state does not paint a very vivid portrait of Applicant. Therefore, due in part to the paucity of evidence submitted, I find Mitigating Conditions AG ¶ 26(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*); AG ¶ 26(b)(1) (*disassociation from drug-using associates and contacts*); AG ¶ 26(b)(2) (*changing or avoiding the environment where drugs were used*); AG ¶ 26(b)(3) (*an appropriate period of abstinence*) and AG ¶ 26(b)(4) (*a signed statement of intent with automatic revocation of clearance for any violation*) have limited application.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). 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 the above-referenced guidelines in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed above, but some warrant additional comment.

Applicant is a 27-year-old employee of a defense contractor. He has earned a bachelor's degree, two master's degrees, and is working on a doctorate degree. He is single. Little is known of his personal, social, family, or professional life. Applicant became heavily enmeshed in drugs while an undergraduate upperclassmen, using at various times marijuana, cocaine, LSD, psychedelic mushrooms, ecstasy, and abusing Adderall. He acquired some of these illegal drugs through personal purchase. By about 2008, he was down to just using cocaine and marijuana. He relates that he quit using drugs in September 2011, just as he began his current position.

These cases constructively put the burden on an Applicant to mitigate security concerns. In choosing an administrative determination on the record, Applicant limited his information and evidence to his submissions, which failed to flesh out the facts at issue and his admissions. While he should be commended for truthfully disclosing his past drug use on his SCA, the deficiency of his submissions leaves me with insufficient documented facts to assess his present fitness against five or more years of drug abuse, and in light of approximately two years of abstinence. Lacking more evidence and explanation, I conclude Applicant failed to mitigate security concerns.

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.c:	Against Applicant
Subparagraphs 1.d-1.k:	For 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 a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge