



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



In the matter of:)	
)	
)	ISCR Case No. 12-00651
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: Dorn G. Bishop, Esq.

05/16/2013

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline H, drug involvement, Guideline J, criminal conduct, and Guideline E, personal conduct. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On October 2, 2012, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement, Guideline J, criminal conduct, and Guideline E, personal conduct. 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 October 25, 2012, and requested a hearing. The case was assigned to me on January 25, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 7, 2013, and the hearing was convened as scheduled on March 13, 2013. The Government offered exhibits (GE) 1 through 6, which were admitted into evidence without objection. The Government's exhibit index was marked as hearing exhibit (HE) I. Applicant testified and offered exhibits (AE) A and B, which were admitted into evidence without objection. The record was kept open for Applicant to submit additional evidence. He submitted AE C in a timely fashion and it was admitted without objection. Department Counsel's transmittal letter was marked as HE II. DOHA received the hearing transcript (Tr.) on March 22, 2013.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations stated in the SOR. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 33 years old. He is single and has no children. Since July 2011, he has worked for a defense contractor as a software engineer. He has an associate's degree. He has no military background and has never held a security clearance.¹

Applicant's admitted conduct raised in the SOR includes: (1) using methamphetamine about 20 times from 1999 to 2000; using methamphetamine, cocaine, ecstasy, and marijuana on multiple occasions from about 2006 to 2008; using marijuana daily from February 2010 to June 2010; using methamphetamine about 12 times from about April 2010 to May 2012; purchasing methamphetamine and marijuana from about 1999 to 2012 (See SOR ¶¶ 1.a – 1.e); (2) being treated for drug abuse in hospitals in 2000 and 2007; being arrested for driving under the influence of drugs (ecstasy) in July 2007; receiving inpatient drug abuse treatment in 2000 and 2008; receiving treatment beginning in May 2011 for lingering paranoia and anxiety resulting from methamphetamine use (See SOR ¶¶ 1.f – 1.i). The conduct alleged in SOR ¶¶ 1.a -1.e, and 1.g was also alleged as criminal conduct and personal conduct concerns under Guidelines J and E. (See SOR ¶¶ 2.a and 3.a).

Applicant began using drugs as a sophomore in high school. He used them on weekends and when at parties. He smoked marijuana or drank alcohol daily. He smoked and drank in this manner because his friends did it and he was bored. He obtained the marijuana from his friends. He stopped using marijuana in 1998 when he moved to a different state. In the new state, he met a friend who used methamphetamine. Applicant began using this drug when he was around this friend. He lost contact with this friend and did not use any drugs again until about 1999. From 1999 to 2000, he became associated with a group of friends who liked to party, drink

¹ Tr. 23-24; GE 1.

alcohol, and use drugs. He began drinking with these friends on a monthly basis and using marijuana and methamphetamine weekly.²

In 2000, Applicant's mother took him to a hospital emergency room because of a methamphetamine overdose. After his hospitalization, he entered into a drug treatment program. The program consisted of six days of inpatient treatment and three months of outpatient treatment. There is no information in the record about his diagnosis or prognosis from this treatment. He followed this program with active participation in Alcoholics Anonymous (AA) attending weekly meetings for about five years. He remained drug free during this time.³

In the summer of 2005, one of Applicant's high school friends visited him. They smoked marijuana for "old time sakes," which led to his resumption of regular drug use. He used marijuana, cocaine, and methamphetamine on a daily basis. He also stopped attending AA meetings. He bought the drugs (marijuana, cocaine, and methamphetamine) from friends and a particular cab driver. In 2007, his cocaine use caused his heart to beat irregularly. He believed he used a bad batch of cocaine. His father took him to the emergency room. Nothing appeared to be wrong with him, so he was released from the hospital. He continued to use drugs after this trip to the hospital. In July 2007, he was arrested for driving under the influence (DUI). The night before the arrest, he was at a party where he used ecstasy. He had never used the drug before and wanted to experiment with it. The drug made him feel exhausted and sleepy, which carried over to the next day when he was driving. He was pulled over by law enforcement for swerving his car. The charges were reduced to reckless driving and he was fined.⁴

In April 2008 he voluntarily entered a drug treatment program. He stayed in the program as an inpatient for 12 days. He left without completing the program because he felt bullied by another member of the group. He was evaluated upon admission and discharge by a qualified medical professional of a recognized drug treatment program. Both his admitting and discharge diagnoses included amphetamine dependence. His prognosis was poor. He remained drug free for the next 18 months.⁵

In 2010, once again, the arrival of an old high school friend led to his use of marijuana. He then began using methamphetamine again for about four to five months. He smoked marijuana daily for about a month. He used drugs sporadically until about December 2010 when he stopped. He started going to AA meetings again. He abstained from using drugs through April 2012. During this time, he was interviewed by an investigator for his security clearance worthiness. He then relapsed again in April

² Tr. 29; GE 2.

³ Tr. 32, 73-75; GE 2, 3.

⁴ Tr. 81-83; GE 2.

⁵ Tr. 75-76, 78; GE 4.

2012 by using methamphetamine. He did not report his drug use to his security manager or anyone else connected with his job. He used it about 12 times for a month. He stopped on June 29, 2012, and claims to be drug and alcohol free since then.⁶

Applicant is currently an active member of AA. He has attended between five and seven AA meetings a week for the last nine months. He also is involved in AA “step” work, which is working the 12 steps of the program with other members. He has an AA sponsor who he talks to weekly. In May 2011, he began seeing a psychologist for an anxiety disorder. His withdrawal from methamphetamine abuse causes him paranoia and his psychologist is treating him for that. He initially saw the psychologist about once a week, but now is seeing him about once every three weeks. He is taking anxiety medication including Xanax. He used methamphetamine after he began seeing his psychologist. He did not disclose his use to his psychologist.⁷

Applicant had two witnesses testify for him. One witness knew him from their 10-year working relationship. He believed Applicant was trustworthy and had good judgment. The second witness knew Applicant through AA. He was one of Applicant’s sponsors. He has known Applicant 12 years and has seen him grow in the AA program as he has gotten older. He believes Applicant will be successful with his sobriety this time because he has a support system around him now. Applicant also presented two character letters. One is from a coworker who believes Applicant is trustworthy, reliable, and honest. The second letter is from another AA sponsor who knows Applicant through a 12-step study program. He opines that Applicant will remain sober as long as he continues to go to daily AA meetings and “works the steps.” Applicant also submitted a written statement of intent not to use drugs or alcohol while holding a security clearance.⁸

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

⁶ Tr. 85-87, 90-93, 95; GE 2, 3.

⁷ Tr. 93-95, 97-98, 100; GE 5.

⁸ Tr. 125, 135136, 144; AE A-C.

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 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 drug involvement security concern:

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 found the following relevant:

(a) any drug abuse; and

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

Between 1999 and 2012, Appellant purchased and used marijuana, cocaine, and methamphetamine on a number of occasions. In 2000 and 2007, he was hospitalized because of his drug abuse. In 2007, he was arrested for DUI based upon his use of ecstasy. In 2008, he was evaluated and diagnosed by a qualified medical professional as amphetamine dependent. I find that all the above disqualifying conditions apply, except as to SOR ¶¶ 1.h and 1.i. The drug treatment he received is not a disqualifying condition, but rather is considered a good thing and is therefore included as a mitigating condition. Applicant may suffer from anxiety and paranoia related to his drug abuse, but that conduct does not fall within the stated disqualifying conditions under this guideline.

I have considered all of the evidence in this case and the mitigating conditions under drug involvement AG ¶ 26 and found 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;

(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; and

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant's short period of abstinence is insufficient to demonstrate his intent not to use illegal drugs in the future. He has made several attempts to abstain from drugs throughout the years, but has continually relapsed back into drug use with the most recent occasion being in June 2012, less than one year ago. His most recent use was after having filled out his security clearance application and after his investigative interview for a clearance was conducted. He was well aware at that time of the prohibition to use illegal drugs and that such use was not condoned by the DoD. Despite this knowledge, he used drugs anyway. Even though he signed a letter of intent not to use drugs in the future and has been drug free for about nine months, his past actions, particularly his repeated relapses into drug use, cast doubt on his current reliability, trustworthiness, and good judgment. It is too soon to tell whether his use will recur. Although he claims he no longer uses drugs or alcohol, this is not enough to show a demonstrated intent not to use drugs in the future. Neither AG ¶¶ 26(a) nor

26(b) applies. Although he completed a drug treatment plan in 2000, he relapsed into drug use after this program and he failed to complete the 2008 drug treatment plan that he entered. He also relapsed into drug use after the 2008 treatment program. AG ¶ 26(d) does not apply.

Guideline J, Criminal Conduct

The security concern relating to the guideline for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying in this case. The following are potentially applicable:

- (a) a single serious crime or multiple lesser offenses; and
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant's numerous drug purchases and use constituted criminal action on his part. I find that all the above disqualifying conditions apply.

I have also considered all of the mitigating conditions for Criminal Conduct under AG ¶ 32 and considered the following relevant:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Less than a year has passed since Applicant last criminal use of drugs. This is not a sufficient amount of time to determine whether his drug rehabilitative efforts will be successful. Given his past history of multiple drug-use relapses, it can't be determined that it is unlikely that his drug use will recur and those relapses cast doubt on his reliability, trustworthiness, and good judgment. Under these circumstances, his last act is not sufficiently attenuated after considering his behavior in its totality. AG ¶ 32(a) does not apply. Likewise, his nine months of drug abstention, is not a sufficient period to determine whether his drug rehabilitation efforts have been successful. Although

Applicant is fully participating in AA, his prior track record indicates that he has participated in that program for long periods in the past and yet he still relapsed into drug use. Although it appears he is headed down the right track, not enough time has passed to determine whether his rehabilitative efforts have succeeded. So, while some aspects of this mitigating condition are present, on the whole Applicant has not presented sufficient evidence for AG ¶ 32(d) to completely apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the personal conduct security concern:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. The following disqualifying condition is potentially applicable:

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant's use of illegal drugs over an extended period of time, and as recently as June 2012, created a vulnerability to his personal standing. AG ¶ 16(e) applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and found the following relevant:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation or duress.

I considered all of the facts and circumstances surrounding Applicant's drug use. It is not a minor offense and his use casts doubt on his trustworthiness, reliability, and good judgment. Nothing about Applicant's actions reduced his vulnerability to exploitation, manipulation or duress. AG ¶¶ 17(c) and (e) do not apply.

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 recent commitment to AA and his coworker support. However, I also considered that he used drugs on multiple occasions, most recently after applying for and being interviewed for a security clearance. 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, Guideline J, criminal conduct, and Guideline E, personal conduct.

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.g:	Against Applicant
Subparagraphs 1.h-1.i:	For Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	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