



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-02928¹

Appearances

For Government: Stephanie Hess, Esquire, Department Counsel
For Applicant: *Pro se*

09/30/2014

Decision

HOWE, Philip S., Administrative Judge:

On December 2, 2011, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On February 26, 2014, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines H (Drug Involvement) and E (Personal Conduct). 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 on September 1, 2006.

¹ The correct case number is ISCR 12-02928. The SOR was corrected to show it.

Applicant answered the SOR in writing. Applicant contended he made a mistake on dates of marijuana use. Applicant requested his case be decided on the written record in lieu of a hearing.

On April 2, 2014, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant on April 3, 2014. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on April 9, 2014. Applicant filed a Response to the FORM within the 30 day time allowed that would have expired on May 9, 2014. The Department Counsel had no objection to this Response. I received the case assignment on September 12, 2014. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant denied in part the allegations in Subparagraph 1.a and admitted part of them. He denied the allegations in Subparagraphs 2.a and 2.b. (Items 2-4)

Applicant is 45 years old. He is married and has one child. He works for a defense contractor. He has been employed there since 1992. (Items 6-8)

Applicant stated on his 2011 e-QIP that he used illegal drugs during the past seven years from January 1995 until June 2008 in answer to Section 23 concerning the "Illegal Use of Drugs or Drug Activity." Applicant stated it was a marijuana cigarette he smoked, used infrequently, perhaps every other year. He confirmed those dates and usage during the investigation by the government investigator in February 2012. During the interview Applicant stated he used the marijuana in a pipe and cigarette form. Applicant received a security clearance in 1992 and it was renewed in 2002. He used the marijuana outside of work for the defense contractor. (Items 4m 6-8)

Applicant now asserts he made a mistake on the dates of usage of the marijuana. He really meant to admit that his use was from 2005 to 2008. He did not correct this mistake during the interview. He claims it was a clerical error on his part to type the wrong date on the e-QIP. Applicant states his nervousness made him not tell the investigator the actual date of his use was from 2005 instead of 1995. Applicant also contends his answer to the same question on his 2002 e-QIP was correct that he had not used illegal drugs in the previous seven years because his drug use started in 2005 not 1995. Applicant admits he used marijuana from 2005 to 2008 while holding a security clearance. (Items 4, 6-8; Response)

Applicant requests "mercy" for his mistake. He also stated in his Response that his family had several problems in 2011. He asserted that the problems were that his

mother was dying, his father was overwhelmed with paperwork for his mother's medical care, he traveled a lot for his employer so he could not help his father and mother regularly, he had a medical test for possible cancer, he had a lower back problem which necessitated a medical leave of absence, and he had to move from one house he owned but lost to foreclosure into a rental property because his house was foreclosed. Applicant also filed Chapter 7 bankruptcy. It was discharged on July 5, 2012. (Items 4, 6-8; Response)

Applicant submitted a security clearance application on February 15, 2002. In response to Question 27 on that form he denied using illegal drugs in the previous seven years. In 2011 Applicant admitted using marijuana from 1995 to 2008, part of the time period covered by his answer on his 2002 security clearance application form. Applicant confirmed that time period during his 2012 investigation by the U.S. Government. Therefore, he used an illegal drug while holding a security clearance from 1992 to 2002. (Items 3, 4, 6-8; Response)

Applicant submitted two character statements. They are from co-workers at his place of employment. They state Applicant is dependable and hard working. The authors also state Applicant is loyal and professional in his work. (Item 5)

Applicant's credibility, demeanor, or character in person could not be evaluated because he elected to have his case decided without a hearing.

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, the administrative judge applies the guidelines in conjunction with the factors listed in AG ¶ 2 describing 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 based on the evidence contained in the record.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. 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 security concern pertaining to illegal drugs:

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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. Three conditions apply:

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

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

(g) any illegal drug use after being granted a security clearance.

Applicant admitted to illegal drug use by smoking marijuana in a pipe or a cigarette on various occasions from January 1995 to June 2008. He had to possess the marijuana to smoke it. He had a security clearance from 1992 onward and used the marijuana for 13 years during the term of his access to classified information. These three disqualifying conditions apply.

AG ¶ 26 provides conditions that could mitigate security concerns:

(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; and,

(4) a signed statement of intent with automatic revocation of clearance for any violation;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; 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 used marijuana for 13 years. He admits to not using for the past six years. He has not supplied any objective evaluation concerning his drug relationship. He also did not submit any urinalysis to show any current marijuana usage. He claims his marijuana use was really from 2005 to 2008, not from 1995 to 2008. His attempts to lessen the term of his drug use undermine his credibility even on the issue of his term of marijuana use. The marijuana use was not long ago and did not happen under unusual circumstances that make it unlikely to recur. While Applicant claims he only used it once a year, there is no evidence to verify that claim. His actions cast serious doubt on his current reliability, trustworthiness, and good judgment, primarily because he used marijuana while holding a security clearance. AG ¶ 26 (a) does not apply.

Applicant claims he has abstained from marijuana use since the summer of 2008. There is no independent or medical verification of that assertion. The remaining portions of AG ¶ 26 (b) also do not apply.

Prescription drugs were not at issue in Applicant's case. AG ¶ 26 (c) does not apply.

Applicant has not attended or completed a prescribed drug treatment program. Therefore, AG ¶ 26 (d) does not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and,

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes six disqualifying conditions that could raise a security concern and may be disqualifying. Two conditions may apply:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Applicant did not disclose his marijuana use on his 2002 security clearance application. His falsification was used to obtain a security clearance for Applicant's work continuation. That non-disclosure conduct, referring to his marijuana use until 2008, if made known publically, would create a vulnerability to exploitation, manipulation, or duress by having an adverse effect on his professional and community standing. AG ¶ 16 (a) and (e) apply.

Applicant typed the dates of "1995" and "2008" on his 2011 e-QIP. He now claims the "1995" should have been typed "2005." However, it takes different key strokes of numbers on the computer terminal and a deliberate lack of visual verification before Applicant signed his name to the written attestation in the e-QIP that what he

typed was correct. Even if it were true, which is not credible in the total circumstances of the e-QIP, that Applicant did use marijuana only from 2005 to 2008, it would still mean he used it while holding a security clearance. The sanctions would be the same, the misleading of the government the same, and the actions the same, just a mere change in time. It does not make Applicant less liable for his misconduct.

AG ¶ 17 provides seven conditions that could mitigate security concerns. In Applicant's case, none apply:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully.

(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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

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

(f) the information was unsubstantiated or from a source of questionable reliability; and,

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant did not make prompt and good-faith efforts to correct his mistake. AG ¶ 17 (a) does not apply.

Applicant's falsification of two security clearance applications was not caused by advice from any authorized person or legal counsel. He did not correct his e-QIPs promptly. AG ¶ 17 (b) does not apply.

The offense of smoking marijuana while holding a security clearance is not a minor offense nor is there accurate evidence that the use was infrequent. The circumstances were not unique. His family problems in 2011 did not affect his ability to accurately and truthfully answer the 2011 e-QIP question on his illegal drug use. AG ¶ 17 (c) does not apply.

Applicant did acknowledge his past marijuana use. However, he never obtained any counseling to alleviate any stressors in his life that caused untrustworthy, unreliable, or inappropriate behavior. Such marijuana use could reoccur. AG ¶ 17 (d) does not apply.

Applicant has not taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress. AG ¶ 17 (e) does not apply.

The information supplied by Applicant is substantiated by his own admissions. AG ¶ 17 (f) does not apply.

There is no evidence Applicant associated with persons involved in criminal activity. Therefore, AG ¶ 17 (g) is not applicable.

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):

(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 facts and circumstances surrounding this case. Applicant was an adult when he used marijuana while holding a security clearance and working for a defense contractor. His actions were voluntary. There is no independent verification of his asserted abstinence. There is potential for pressure, coercion, exploitation, or duress. It is likely that Applicant's marijuana usage will reoccur. His attempts at altering the dates of his marijuana use to lessen the effect on his security clearance renewal are not persuasive or believable.

Overall, the record evidence leaves me with serious questions and substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Drug Involvement. He did not mitigate the security concerns under the guideline for Personal Conduct. I conclude the whole-person concept against Applicant.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraphs 2.a and 2.b: 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.

PHILIP S. HOWE
Administrative Judge