



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



In the matter of:)
)
) ISCR Case No. 12-03531
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: Jerry Fugit, Esq. and Andre D'Souza, Esq.

12/12/2013

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline H, drug involvement. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On August 21, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement. DOD acted 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.

Applicant answered the SOR on August 29, 2013, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on September 28, 2013. The FORM was mailed to Applicant

on October 3, 2013. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He submitted his response to the FORM on November 14, 2013 (Response). The case was assigned to me on November 22, 2013.

Findings of Fact

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

Applicant is 35 years old. He is married and has no children. He has a Ph.D. in mathematics. Since October 2010, he has worked for a defense contractor. He has no military service and has not previously held a security clearance.¹

Applicant's admitted conduct raised in the SOR includes: using and purchasing marijuana on numerous occasions from 1999 through May 2011; using hashish about five times from about 1999 to about 2004; and using and purchasing hallucinogenic mushrooms three times from about 2000 to about 2008 (See SOR ¶¶ 1.a – 1.d).

Applicant first began using marijuana as an undergraduate college student and continued through his graduate and post-graduate collegiate years. Initially, he used marijuana about twice a week, sporadically, but over time that use gradually decreased. During the timeframe from 2008 to 2011, when he moved to his current location, he reduced his use to about one to two times per month. His last use was in May 2011. Using marijuana was mostly a social event for him and was prevalent in the academic-based lifestyle he was living from 1999 through 2008. At times he would purchase about a quarter ounce of marijuana at the cost of about \$75. He purchased marijuana for his own use, and he would share it with his friends.²

In addition to marijuana, Applicant used hashish about five times when he was an undergraduate from 1999 to 2004. He used it with friends at social functions, but because of its harsh taste, he stopped using it. He also experimented with hallucinogenic mushrooms on about three occasions between about 2000 and 2008. He used it with friends on two occasions and with his girlfriend (now wife) one time. The last use was while on a backpacking vacation in 2008.³

Applicant decided to stop using all drugs prior to applying for his present position. His cessation is corroborated by his wife's sworn affidavit. Many circumstances in his life have changed and using drugs was not compatible with those changes. He no

¹ Items 2-3.

² Items 2, 4; Response.

³ Items 2, 4; Response.

longer was in the drug-permissive academic environment, he is now married, is a home owner, and has disassociated from those who use drugs. His wife stopped using drugs when they were married in 2012. His current focus is on maintaining a successful career and someday raising a family.⁴

Applicant admitted the full extent of his drug use in his initial security clearance application (SF 86) and he also described in detail his drug use to a DOD investigator. He also offered into evidence hair analysis and urinalysis drug screening tests that showed negative results for five drugs including THC (the metabolite found in marijuana). The tests were reported on November 5, 2013. Applicant also submitted a written statement of intent not to use any illegal drugs in the future.⁵

Applicant offered a character letter from his current supervisor attesting to his good character for trustworthiness. This supervisor, who has held a security clearance for more than 20 years, recommends him for a clearance. His work appraisal also reflects that he is a positive contributor to his employer.⁶

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 based on the evidence contained in the record.

⁴ Items 2, 4; Response.

⁵ Items 2-4; Response.

⁶ Response.

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 security concern pertaining to 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.

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 ... purchase

Appellant used and possessed marijuana on a number of occasions. He also used hashish on five occasions and used and purchased hallucinogenic mushrooms on three occasions. I find the above disqualifying conditions apply.

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; and

(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.

Although Applicant's marijuana purchasing and use was frequent, his use of hashish and illegal mushrooms was infrequent. However, he has abstained from all drug use for over two years. That abstinence is partially corroborated by the drug test offered into evidence and his wife's affidavit. Given his age and the circumstances of his use (permissive drug-use lifestyle associated with academia), such use happened under circumstances unlikely to recur. His change of lifestyle (getting married, buying a house, obtaining a job with a defense contractor, moving away from his college location), the negative drug tests, and the positive recommendation from his current supervisor all support the conclusion that his past use does not affect his current reliability, trustworthiness, or good judgment. AG ¶ 26(a) applies. The period of abstinence is sufficient to demonstrate Applicant's intent not to use in the future. Additionally, he has disassociated from most of his drug-using friends and submitted a sworn statement of intent not to use any drugs in the future with automatic revocation of clearance for non-compliance. AG ¶ 26(b) applies.

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 the Applicant's supportive character evidence and his negative drug tests. I also considered Applicant's statement of intent not to use drugs in the future. I also weighed that he used marijuana on numerous occasions, his age at the time of such use, and the surrounding circumstances. He also demonstrated a commitment toward non-use of any drugs in the future. Applicant provided sufficient evidence to mitigate the security concerns.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline H, drug involvement.

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:	FOR APPLICANT
Subparagraphs 1.a-1.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert E. Coacher
Administrative Judge