



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



In the matter of:)
)
) ISCR Case No. 12-03774
)
)
Applicant for Security Clearance)

Appearances

For Government: Allison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

01/07/2013

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the drug involvement security concern generated by his illegal drug use. Clearance is denied.

Statement of the Case

On August 28, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant 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 as of September 1, 2006.

Applicant answered the SOR on September 12, 2012, admitting all of the allegations and requesting a hearing. On October 22, 2012, the case was assigned to me. On October 26, 2012, a notice of hearing was issued scheduling the case for

November 13, 2012. At the hearing, I received into evidence one Government exhibit (GE 1) and 17 Applicant exhibits (AE A-Q) Also, I considered Applicant's testimony. The transcript was received on November 21, 2012.

Findings of Fact

Applicant is a 37-year-old married man with two children ages three and five. He earned a bachelor's degree in electrical engineering in 1996, graduating magna cum laude from a prestigious university, and finishing within three years. (AE A; Tr. 20) While in college, Applicant was the captain of the school's swim team. He remains active with his alma mater. In 2007, Applicant's college honored him as the engineering mentor of the year. (AE O)

Shortly after graduating, Applicant took a job with a start-up company that focused on product development. Among other things, he supported various aspects of algorithm development and magnetometer calibration. (AE I) Applicant's stint at the start-up company was extraordinarily successful. He was the leading inventor, on the company's behalf, of ten patented products. (AE B, AE R; Tr. 21) When Applicant left the company in 2011 to start his own company, he cashed in stock options worth approximately \$200,000. (AE D)

Applicant has operated his company for approximately one-and-a-half years. He "provide[s] computer engineering consulting services spanning from hardware design to embedded software development with emphasis on digital processing." (AE P) Applicant seeks a security clearance to provide services for one of his federal government clients.

Between 2000 and 2010, Applicant abused multiple illegal drugs. The first illegal drug Applicant used was marijuana. He tried it at a night club in 2000 and used it approximately once per year for the next five years. (Tr. 39) Applicant's illegal drug use expanded to include hallucinogens, amphetamines, and ketamine, an animal tranquilizer. (Tr. 56-68)

The drug Applicant used most frequently was the hallucinogen MDMA, also known as Ecstasy. Between 2000 and 2005, he used it at night clubs approximately once every three to four weeks. (Tr. 41) Sometimes during this period, he used LSD or hallucinogenic mushrooms. Also on some occasions, he would combine his use of hallucinogens with methamphetamines.

In 2006, Applicant's illegal drug use gradually began decreasing. He quit using marijuana and ketamine, and he only used hallucinogenics two to three times that year. (Tr. 43) Between 2007 and 2010, Applicant's use of illegal drugs was limited to one weekend per year. Typically, Applicant and his friends would get together on Saturday morning, use LSD, then take the subway downtown to tour museums. Then, they would return to one of the friend's apartments, change clothes, go to a club, take MDMA, then party all night. During some of these episodes, Applicant would inhale methamphetamines. (Tr. 57) Applicant would then spend all day on Sunday recovering

from the drug binge. (Tr. 52, 66) According to Applicant, the hallucinogens enabled him, while touring the museums, to engage in “introspection,” and to “think about the bigger picture of life and what [he] could do to better both [him]self and the world around [him].” (Tr. 64)

Applicant stopped this annual ritual after 2010. (Tr. 49) He decided shortly after his first child was born that he wanted to spend more time at home, and that he did not want his child to be exposed to such behavior. (Tr. 50, 56) Also, he no longer associates with the friends with whom he participated in the annual ritual.

Applicant does not intend to abuse illegal drugs in the future. He testified, as follows:

Now, there’s a time and place for that and that time and place for me has passed. But at the time, I think it has made me better able to relate to people. . . . I think that use of drugs has helped me become more of a human and helped me better able to manage and relate to people. (Tr. 61)

Policies

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a security clearance.

Analysis

Guideline H: Drug Involvement

Under this guideline, “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). Applicant’s history of illegal drug use triggers the application of 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.”

Applicant’s drug abuse was frequent. Also, the circumstances surrounding much of his use demonstrated a reckless disregard for his safety. He cannot attribute his illegal drug use to immaturity because he started using drugs four years after he finished college.

Applicant gradually began to decrease his drug usage after 2005. However, this fact has minimal probative value given the type of drugs that he continued to use and the circumstances surrounding his continued usage.

Applicant no longer associates with his drug-abusing friends, and has not used illegal drugs in two years. AG ¶ 26(b)(1), “a demonstrated intent not to abuse any drugs in the future, such as . . . disassociation from drug-using associates and contacts,” applies. Any positive inference from the fact that Applicant no longer associates with his drug-abusing friends is greatly outweighed by the nature and circumstances of the illegal drug use. Applicant has not mitigated the drug involvement security concern.

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.

Applicant is an extraordinarily intelligent, highly successful man. He is well-respected in his profession, and mentors young engineering majors at his alma mater. Given the nature, extent, and seriousness of his drug abuse and its recency, I cannot conclude that he has mitigated the conduct. In reaching this conclusion, I was particularly troubled by his nonchalant, nearly nostalgic explanation for choosing to abuse hallucinogens. Upon considering this case in the context of the whole-person concept, I conclude Applicant has failed to mitigate the security concern.

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

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.

MARC E. CURRY
Administrative Judge