



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



In the matter of:)	
)	
)	ISCR Case No. 12-03924
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel
For Applicant: *Pro se*

02/28/2014

Decision

CURRY, Marc E., Administrative Judge:

Applicant’s decision to smoke marijuana while at a concert constituted a serious exercise of bad judgment. Given its isolated nature, Applicant’s history of outstanding job performance, and his sterling reputation in the community, the possibility of recurrence is minimal. Applicant mitigated the drug involvement and personal conduct security concerns. Clearance is granted.

Statement of the Case

On October 8, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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).

The government received Applicant's answer on November 5, 2013. Applicant admitted the allegations and requested a hearing. I was assigned the case on December 16, 2013. On January 14, 2014, a notice of hearing was issued scheduling the case for February 6, 2014. At the hearing, I received two Government exhibits marked as Government Exhibits (GE) 1 and 2, in addition to seven Applicant exhibits marked as Applicant Exhibits (AE) A through G. Also, I considered the testimony of Applicant and two character witnesses. The transcript was received on February 14, 2014.

Findings of Fact

Applicant is a 56-year-old married man with two adult children. In the late 1970s, he earned a bachelor of science degree in mechanical engineering. In 1980, he was hired by a defense contractor. He has remained with this employer since then, and is currently a senior advisory mechanical engineer. (AE D) He has held a security clearance for more than 30 years. (Tr. 14)

Applicant is highly respected on the job. According to a high-level supervisor, he has a "tremendously strong work ethic." (AE C) A senior executive characterizes Applicant as "one of the most productive, consistent, and reliable members of the engineering team." (AE D)

Applicant is very active in his community. According to a neighbor, he frequently volunteered for parents' groups when his children were in secondary school. Also, he often contributes his engineering expertise to community projects, such as installing an irrigation system at the neighborhood sports park. (Tr. 45)

In June 2011, Applicant went to an outdoor concert with his adult son. People were smoking marijuana freely, sharing joints, and passing them around. As a joint circulated around Applicant's vicinity, he took it and smoked a few puffs before passing it to another individual. (Answer at 1) Before this episode, Applicant had not smoked marijuana since he was a teenager. Applicant testified that being at the concert with people passing around marijuana cigarettes "took [him] back to the 1970s, [a]nd [he] kind of lost track of maybe who [he] was and [how] old [he] was . . ." (Tr. 33)

Applicant's employer knows about Applicant's June 2011 use of marijuana. (Tr. 34, 41) His opinion of Applicant's character and trustworthiness remains unchanged. (Tr. 42) Applicant has not smoked marijuana since the episode at the concert, and he has no intention of using it again. (Tr. 34)

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 smoked marijuana at a concert in June 2011. At the time, he held a security clearance. AG ¶¶ 25(a), “any drug abuse,” and 25(g), “any illegal drug use after being granted a security clearance,” apply.

Before this episode, Applicant had not used marijuana in more than 30 years. He has not used it since then, and has no intention of using it again. He is highly respected on the job and in his community. I conclude that this behavior is mitigated by AG ¶¶ 26(a), “the behavior happened so long ago, was so infrequent . . . that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment,” and 26(b)(3), “an appropriate period of abstinence,” apply.

Guideline E, Personal Conduct

The security concern under this guideline is as follows:

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. (AG ¶ 15)

Applicant’s decision to smoke marijuana at a concert in 2011 triggers the application of AG ¶ 16(e), “personal 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 employer knows about his conduct, and still holds him in high regard. The offense was both minor and isolated. AG ¶ 17(c), “the offense is so minor, or so

much time has passed, or the behavior is so infrequent . . . that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," 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.

Applicant's exercised bad judgment when he chose to smoke marijuana at a concert. The nature and seriousness of this behavior was compounded by the fact he held a security clearance at the time. Immaturity is not a relevant factor because Applicant was in his mid-fifties when the episode occurred. Conversely, this was an isolated episode, and Applicant has not used marijuana since then. There is no vulnerability to coercion, as his employer is aware of the episode. On balance, considering these facts, together with his impeccable reputation on the job and in his community, I conclude that Applicant's decision to smoke marijuana, though foolish, was an anomaly, and is unlikely to recur. Applicant has mitigated the 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:	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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.

MARC E. CURRY
Administrative Judge