



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



In the matter of:

)
)
) ISCR Case No. 15-00065
)
)
)

Applicant for Security Clearance

Appearances

For Government: Andrew H. Henderson, Esquire, Department Counsel
For Applicant: *Pro se*

01/26/2017

Decision

WHITE, David M., Administrative Judge:

Applicant admitted having shared marijuana with friends twice during 2011 after he was granted a security clearance in 2005. He has two casual friends who are citizens of NATO countries. Resulting security concerns were fully mitigated. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on August 14, 2014. On July 30, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline H (Drug Involvement), and Guideline B (Foreign Influence). 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (AR) on September 10, 2015, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 14, 2016. The case was assigned to me on May 2, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on May 13, 2016, setting the hearing date for June 1, 2016, and I convened the hearing as scheduled. The Government offered Exhibits (GE) 1 through 4, which were admitted without objection. Applicant offered Exhibit (AE) A, which was admitted without objection, and testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on June 8, 2016.

Findings of Fact

Applicant is a 37-year-old employee of a defense contractor, where he has worked since shortly after he earned a Ph.D. degree in physics in August 2009. He has held a permanent security clearance since February 2005, in connection with his work on DoD projects during his post-graduate education and current employment. He has never married and has no children. (GE 1; GE 3; Tr. 7-8.)

Applicant admitted all of the factual allegations set forth in SOR, which were based on his disclosure of that information in GE 1. (AR.) Applicant's admissions, and accompanying explanations, are incorporated in the following findings.

Applicant shared a marijuana cigarette with friends on two occasions, in July and September 2011, before they attended events for rare vinyl record collectors. These events were held on a monthly basis, and Applicant attended them on a fairly regular basis between 2009 and 2014. Other than those two occasions in 2011, he declined to participate when they offered to share their marijuana with him. He offered no justification or excuse for his marijuana use, other than momentary bad judgment in succumbing to peer pressure. After the second incident, he realized that he did not want to be a casual drug abuser and decided that he would never abuse drugs again. He no longer attends those record collector events, and has not abused marijuana since September 2011. Although his clearance remained in effect, he was not working on any classified projects during that period in 2011. Applicant signed a statement of intent to never use marijuana again, with automatic revocation of clearance for any violation. His hearing testimony, concerning his resolve not to abuse drugs in the future, was forthright and credible. (GE 1; AR; AE A; Tr. 27-28, 32-35.)

Applicant worked at a NATO facility in 2008 while completing his Ph.D. requirements. While there, he befriended a Belgian meteorologist and an Italian mathematician who worked at the same facility. He has remained in touch with them on a casual basis via social media, and has visited each of them in person once or twice, in the years since they worked together during 2008. Neither of these individuals works in their respective country's defense or intelligence sectors. (GE 1; AR; Tr. 28-30, 35-41.)

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 (DCs) and mitigating conditions (MCs), which are to be 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he 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." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. The DCs raised by the evidence in this case are:

- (a) any drug abuse; and
- (g) any illegal drug use after being granted a security clearance.

Applicant admittedly used marijuana that was passed around by a group of his friends on two occasions in July and September 2011. He had been granted a security clearance in 2005 that remained in effect, although he was not working on any classified projects at the time. These facts support application of the foregoing DCs, shifting the burden to Applicant to prove mitigation of resulting security concerns.

AG ¶ 26 provides conditions that could mitigate the security concerns. The facts in this case support application of two of them:

- (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;

Applicant's abuse of marijuana was casual and occasional, in social settings with friends who were partaking. He voluntarily chose to stop such activity when he realized that it was inconsistent with his goals and standards of behavior, and his use was

removed in time and place from any work-related security concerns. His honest admission of this error in judgment is the only evidence that it took place, and supports the credibility of his declared intention not to repeat such conduct. The drug abuse ended more than five years ago, and there is compelling evidence that drug abuse is unlikely to recur. Substantial mitigation under AG ¶ 26(a) was accordingly established.

Applicant is employed full time in a demanding professional position. He no longer engages in the recreational activities where peer pressure to use drugs might exist. He has been abstinent since September 2011, and offered a signed statement of intent not to abuse drugs in the future. He also testified credibly concerning his regret about past drug abuse and intentions not to repeat it. These facts establish further strong mitigation under AG ¶ 26(b).

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. The SOR allegations and evidence in this case raised potential security concerns under one foreign influence DC:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

Applicant maintains casual social contact with two foreign citizens, from Belgium and Italy, whom he met while working at a NATO facility in 2008 when they were all graduate students. One is a meteorologist and the other is a mathematician. Neither of them work in the defense or intelligence sectors of their respective governments. I find that Applicant's relationship with these citizens of NATO allies does not create any heightened risk of foreign exploitation, inducement, manipulation, pressure, coercion, or influence under AG ¶ 7(a).

AG ¶ 8 provides conditions that could mitigate security concerns. Those that clearly provide conclusive mitigation of any theoretical security concerns in this case are:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

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 pertinent facts and circumstances surrounding this case. Applicant is a sincere and mature individual, with a consistent professional history of dedicated and loyal service to the United States. He has accepted accountability for his bad judgment in minor marijuana use on two occasions more than five years ago, and convincingly expressed his resolve to avoid similar conduct in the future. His actions have substantially eliminated

the potential for pressure, coercion, or duress, and make continuation or recurrence of security concerns unlikely. His minimal contacts with two casual friends from NATO countries create no potential for pressure or exploitation. Overall, the record evidence creates no doubt as to Applicant's present eligibility and suitability for a security clearance.

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:	FOR APPLICANT
Subparagraphs 1.a:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	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's eligibility for a security clearance. Eligibility for access to classified information is granted.

DAVID M. WHITE
Administrative Judge