



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



In the matter of:

ISCR Case No. 15-00535

Applicant for Security Clearance

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel

For Applicant: *Pro se*

01/04/2017

Decision

COACHER, Robert E., Administrative Judge:

Applicant did not mitigate the drug involvement security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On January 27, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement. The DOD acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 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 February 17, 2016, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on March 15, 2016. The FORM was

mailed to Applicant and he was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He received the FORM on March 21, 2016. He chose not to submit any evidence or object to the Government's evidence included in the FORM. The Government's evidence (Items 2-3) is admitted.¹ The case was assigned to me on December 12, 2016.

Findings of Fact

Applicant admitted the allegations in his answer to the SOR. Those admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 36 years old. He has never been married and has no children. He has worked for his current employer, a defense contractor, since August 2011. He earned a bachelor's degree in 2002. He has held a security clearance since at least February 2005.²

Applicant's admitted conduct raised in the SOR concerning Guideline H includes using marijuana, with varying frequency, from March 2009 to June 2011; using cocaine once in February 2006; and using marijuana and cocaine while holding a security clearance. He admitted using marijuana with his friends who would offer it to him. During college, he used marijuana about once a week. From 2002-2007 and 2008 to 2009, he used marijuana once every week or two. He also used it "a few times" while staying with friends. His last admitted use was in June 2011 while attending a wedding. Some of these uses occurred while he held a security clearance. He used cocaine one time while staying with a friend in 2006.³

He claimed in his security clearance application that he does not intend to use controlled substances in the future. He learned that smoking marijuana caused him headaches and impaired his thinking. He now intends to live a healthier lifestyle, which includes extensive cycling. Applicant did not provide any information about his work performance or other facts that could be used to assess the applicability of whole-person factors.⁴

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

¹ Item 1 includes the SOR and Answer and are considered pleadings, not requiring admission.

² Items 2-3.

³ Items 2-3.

⁴ Items 2-3.

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.

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 about 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 drug involvement security concern:

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 AG ¶ 25 and found the following relevant:

(a) any drug abuse; and

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

Applicant illegally used marijuana on numerous occasions and cocaine once, while possessing a security clearance. I find that 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; and,

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

Applicant admitted extensive marijuana use. His last use was in June 2011. He also admitted a onetime use of cocaine in 2006. Many of the uses occurred while he held a security clearance. Although these uses occurred a number of years ago, there is insufficient evidence in the record to determine whether he will change his drug use behavior. His extensive drug use at his age, education level, and security background is

troubling and a cause for concern. I do not find persuasive his claim of future intention not to use based upon his experiencing headaches. These circumstances lead me to conclude that his actions cast doubt on his current reliability, trustworthiness, and judgment. AG ¶ 26(a) does not apply.

Applicant did not provide a signed statement of intent not to use illegal controlled substances which included an understanding of automatic clearance revocation for any violation. He also did not provide sufficient evidence of a demonstrated intent not to use drugs in the future other than his bare assertion that he would not so use. AG ¶ 26(b) does not apply.

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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant engaged in extensive drug use that, given his age, education level, and security clearance status, calls into question his reliability, trustworthiness, and judgment.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the concerns 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:	AGAINST APPLICANT
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Subparagraphs 1.a – 1.c:	Against Applicant
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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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge