



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



In the matter of:)
)
) ISCR Case No. 15-01865
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

12/01/2016

Decision

CERVI, Gregg A., Administrative Judge:

Applicant mitigated the drug involvement security concerns. Eligibility for access to classified information is granted.

Statement of the Case

Applicant completed a Questionnaire for National Security Positions (SF 86)¹ on June 19, 2014. On September 30, 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, Drug Involvement.²

¹ Also known as a Security Clearance Application (SCA).

² The action was taken 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) implemented by the DoD on September 1, 2006.

Applicant responded to the SOR on October 26, 2015, and requested a hearing before an administrative judge. The case was assigned to me on June 28, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 16, 2016, scheduling the hearing for September 14, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 and 2 were admitted into evidence without objection. Applicant Exhibits (AE) A through D were admitted into evidence without objection. Applicant and a character witness testified at the hearing. The record was held open to permit Applicant to submit additional documentary evidence. He submitted AE E, which was admitted without objection. DOHA received the hearing transcript (Tr.) on September 27, 2016.

Findings of Fact

The SOR alleges Applicant used marijuana from approximately 2009 to 2013; purchased marijuana from 2011 to 2013; was cited and convicted of possession of marijuana in 2012; and use of methylenedioxy-methamphetamine (also known as MDMA or “molly”) in 2013. He admitted the SOR allegations.

Applicant is a 25-year-old associate engineer for a defense contractor. He has been employed in this position since June 2014. He earned a bachelor’s degree in electrical and computer engineering in 2014. He is unmarried. He is applying for his first security clearance, and listed his past drug involvement in his SCA.

Applicant first began using marijuana while in high school. He described his use in mid-2009 as experimental, then it became recreational in late 2009 to early 2010, and habitual from early 2010 to mid-2011. From mid-2011 to the end of 2013, he reduced his use to occasional use with friends at events. In December 2011, Applicant was cited for possession of marijuana in his college dorm room. He pleaded guilty, was fined and attended a drug and alcohol seminar sponsored by his college. Applicant regularly purchased marijuana for himself and to use with friends, and on two occasions, used “molly” in August 2013. He stopped all illegal drug use in December 2013. Since 2013, he improved his grades to achieve a final semester grade point average of 4.0. Applicant believes that from the age of 20, he began to mature and eventually learned to resist peer pressure to use drugs so that he could pursue a healthy lifestyle and a stable career.

Since graduating from college in 2014, Applicant moved to his parents’ home in a different city from his college, and pursued a career with his current employer. He has changed his environment by living a healthy lifestyle, ceasing contact with his college friends that use drugs, and focusing on his career. He submitted a signed statement of intent to refrain from illegal drug use with the understanding that he could receive an automatic revocation of his clearance for any violation, and has agreed in writing to strictly abide by his employer’s drug and alcohol-free work place policy.

Applicant’s immediate manager, a retired U.S. Air Force senior officer, testified on his behalf and submitted a character letter. He spoke very highly of Applicant’s work

ethic, trustworthiness, honesty and reliability. Likewise, a senior member of the engineering staff observed Applicant's adherence to security rules and solid character, and highly recommends him for a clearance. Finally, a personal reference submitted from a college professor and dean observed Applicant's maturity since college, and attested to his current healthy lifestyle and commitment to a drug-free life. I found Applicant to be candid and sincere in his testimony about his past drug use and current lifestyle without the use of illegal drugs.

Law and 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 and mitigating conditions, 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, administrative judges apply the guidelines 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(a), 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.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security clearance decision.³ In *Department of Navy v. Egan*⁴, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.⁵

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." It is well-established law that no one has a right to a security clearance. As noted by the Supreme Court in *Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Under *Egan*, Executive Order 10865,

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan.27, 1995).

⁴ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

⁵ *Egan*, 484 U.S. at 531.

and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.⁶

The Government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive and classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive or classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive or classified information.

Section 7 of EO 10865 provides that adverse 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

The concern under this guideline is set out in AG ¶ 24:

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.” Drugs are defined in AG ¶ 24(a)(1) as “[d]rugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens).

The guideline notes several conditions that could raise security concerns. Based on the evidence, I find that the following disqualifying conditions apply:

AG ¶ 25(a): any drug abuse,⁷ and

AG ¶ 25(c): illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant has a history of illegal drug use and drug purchases from 2009 to 2013. He was also cited for possession of marijuana in his college dorm. AG ¶¶ 25(a) and (c) apply.

⁶ *Egan*, 484 U.S. at 531.

⁷ Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction. AG ¶ 24(b).

The following mitigating conditions are potentially relevant:

AG ¶ 26(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

AG ¶ 26(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 acknowledged his past drug involvement, all while in school. Since 2013, he has abstained from all use of illegal drugs, changed his environment, disassociated from his friends that use drugs, signed a statement of intent, and immersed himself in his career, with excellent results. He has won the support of his colleagues and senior management, and has shown a renewed healthy lifestyle, free from illegal drug use. I was impressed by Applicant's candor and sincerity expressed during his testimony, and his clear intent to leave his past drug use behind. Overall, the record evidence leaves me without questions or doubts as to his eligibility and suitability for a security clearance. I conclude Applicant mitigated the substantive security concerns. AG ¶¶ 26(a) and (b) 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 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 all of the potentially disqualifying and mitigating conditions in light of all the facts and

circumstances surrounding this case. I have incorporated the evidence, my findings of fact and comments under Guideline H in this whole-person analysis.

Overall, Applicant has acknowledged his past drug involvement and has shown that he no longer finds a lifestyle involving drug use compatible with his values and career goals. He has immersed himself in his work, changed his environment, and won the praise of his colleague and manager. I am convinced of Applicant's sincerity in his promise to abstain from all future use of illegal drugs. Based on the record, Applicant's history of drug involvement no longer casts doubts on his reliability, trustworthiness, and good judgment.

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:

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| Paragraph 1, Guideline H: | For Applicant |
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| Subparagraphs 1.a – 1.d: | For Applicant |
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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.

Gregg A. Cervi
Administrative Judge