



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



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXXXXXXXXXX) ISCR Case No. 15-02035
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esquire, Department Counsel
For Applicant: *Pro Se*

01/13/2017

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ I grant Applicant's clearance.

On 30 October 2015, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guideline H, Drug Involvement.² Applicant timely answered the SOR, requesting a decision without hearing by the Defense Office of Hearings and Appeals (DOHA). The record in this case closed 4 May 2016, when Applicant's response to the FORM was due. Applicant provided no additional documents. DOHA assigned the case to me 16 December 2016.

¹Consisting of the File of Relevant Material (FORM), Items 1-4.

²DoD acted under Executive Order 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 1 September 2006.

Findings of Fact

Applicant admitted the SOR allegation. He is a 35-year-old sheet metal worker employed by a defense contractor since August 2014. From June 1999 to August 2014, he worked in a supermarket. From June 2004 to August 2014, he worked part time as an apprentice/intern at his uncle's engineering firm. He has not previously held a clearance.

Between January 2000 and February 2014, Applicant used marijuana two or three times per year, at social gatherings or parties outside his home, when someone at the gathering brought marijuana. Applicant fully disclosed his drug history on his August 2014 clearance application (Item 3).

Applicant stopped using marijuana in February 2014, because he knew that he would not be able to use it if he got the job he was applying for at his present employer (Item 4). He did not think it would be worth the risk to continue to use. He no longer associates with any of the people he used marijuana with.

Policies

The adjudicative guidelines (AG) list factors to be considered in evaluating an applicant's suitability for access to classified information. Administrative judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial commonsense consideration of the factors listed in AG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against an applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline H (Drug Involvement).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does, it establishes a baseline case against granting a clearance. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, an applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own.

The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an Applicant’s suitability for access in favor of the government.³

Analysis

The Government established a case for disqualification under Guideline H, by demonstrating Applicant’s lengthy illegal drug abuse between January 1994 and February 2014.⁴ However, Applicant mitigated the security concerns. Despite the length of Applicant’s illegal drug involvement, that drug history encompasses infrequent use in social settings surrounding his contacts when he worked in a supermarket. However, when he undertook a better job at an employer who required a drug-free workplace, he knew he had to cease using illegal drugs. He has used no illegal drugs since February 2014.

Drug involvement mitigating conditions give substantial support to Applicant. His illegal drug abuse was infrequent, although lengthy. However, his last illegal drug use was February 2014, over two years ago, at a time he was still working in the supermarket environment.⁵ The issue is not so much the 13 years that he used marijuana recreationally, but the clear-eyed decision he made when he applied for a better job. Further, he demonstrated intent to not abuse drugs in the future by abstaining altogether for more than two years, disassociating himself from drug-using contacts and avoiding the environments where he used drugs with friends.⁶ I conclude Applicant is unlikely to abuse illegal drugs in the future. Accordingly, I resolve Guideline H for Applicant.

Formal Findings

Paragraph 1. Guideline H:

FOR APPLICANT

Subparagraph a:

For Applicant

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴¶ 25 (a) any drug abuse;

⁵¶ 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 [Emphasis supplied];

⁶¶ 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; (4) a signed statement of intent with automatic revocation of clearance for any violation;

Conclusion

Under the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

JOHN GRATTAN METZ, JR
Administrative Judge