



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



In the matter of:)
)
) ISCR Case No. 15-03895
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: Jeffrey S. Gard, Esq.

03/03/2017

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline H, Drug Involvement. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On March 11, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement. 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), implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on March 24, 2016, and requested a hearing before an administrative judge. The case was assigned to me on July 15, 2016. DOHA issued a notice of hearing on September 21, 2016, and the hearing was convened as

scheduled on October 27, 2016. The Government offered exhibits (GE) 1 – 3, which were admitted into evidence without objection. Department Counsel's discovery letter, an email from October 19, 2016, and an exhibit index were marked as Hearing Exhibits (HE) I - III. Applicant testified, presented two witness, and offered exhibits (AE) A and B, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on November 4, 2016.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations. I have incorporated those admissions into my findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following additional findings of fact.

Applicant is 41 years old. He is married and has four children. He has a high school diploma and some technical certifications. He works in the information technology field. He has worked for two defense contractors since 2011 and his current employer since March 2013. He deployed to Afghanistan for a year in 2012. Since then, with his new employer, he deploys approximately five times a year for eight weeks at a time. He has held a security clearance since December 2011.¹

Applicant's conduct alleged in the SOR included using cocaine on one occasion in January 2012, while holding a security clearance, and using marijuana on two occasions between July 2009 and April 2010. (See SOR ¶¶ 1.a and 1.b.)

Applicant was 33 when he used marijuana. On both occasions, in 2009 and 2010, he was with family members (two different cousins) at family outings. He was offered marijuana by his cousins during a camping trip and at a barbeque. Each time he took about two "hits." He did not like the way it made him feel and he has not used it again. He used it then to socialize. He does not know if his cousins still use marijuana. He has no intention of using marijuana in the future.²

Applicant received his security clearance in December 2011. The company he worked for had a drug-free workplace policy of which he was aware. He was scheduled to deploy to Afghanistan for the first time in January 2012. While attending a New Year's Eve party that year, Applicant was offered cocaine by a friend. He did not pay for it. He snorted one line of cocaine. He did not like the way it made him feel and never used cocaine again. When asked why he used cocaine he replied, he was concerned about his deployment, but also realized it was a bad decision. He no longer associates with the friend who gave him cocaine. He reported both his marijuana and cocaine use on his 2013 security clearance application (SCA). He never intends to use cocaine,

¹ Tr. at 21-23, 34, 46-48; GE 1-3.

² Tr. at 26, 42-44; GE 3.

marijuana, or any other drug in the future. His current employer drug tested him annually in 2013, 2014, and 2015. He passed all the tests.³

In August 2016, Applicant was evaluated by a licensed addiction counselor (LAC). The LAC documented her evaluation with a written report. She also testified. Based upon her education and experience in the field of addiction, evaluation, treatment, and counseling, she was qualified and accepted as an expert in those areas. Applicant was interviewed, completed a battery of five assessments, and gave two random urine sample for testing (both with negative results for drugs) as part of his overall evaluation. Based upon her evaluation of this data, LAC opined Applicant did not meet the criteria for having a drug abuse disorder. She further opined that his prognosis of future drug use was minimal. LAC specifically addressed whether the stress of future deployments could cause Applicant to abuse drugs by explaining Applicant's recent deployments did not cause him to return to drug use, and he has established appropriate barriers to prevent future drug use.⁴

Applicant's coworker, who has deployed with him, testified on his behalf. The coworker is also in the Navy Reserve. The coworker has worked with Applicant since 2013. He opines that Applicant is trustworthy and supports his continued access to classified information. He is aware Applicant used cocaine while holding a security clearance and is disappointed with that decision. Nevertheless, he trusts him enough to want to deploy with him again.⁵

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 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.

³ Tr. at 22-23, 27, 29-30, 36, 37-41; GE 2-3.

⁴ Tr. at 60-61, 67, 70-75, 82-83; AE A-B.

⁵ Tr. at 51-54, 56-58.

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 as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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 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.

I have considered all of the evidence in this case and the disqualifying conditions under Drug Involvement AG ¶ 25 and found the following relevant:

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

Appellant used marijuana twice and used cocaine once while holding a security clearance. I find 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; (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant's marijuana use was infrequent and ceased in 2010. He has expressed his intent not to use it in the future. His intent is supported by his voluntary participation in an extensive drug evaluation by a licensed addiction counselor. The results of that evaluation indicated that Applicant does not have a drug use disorder and his prognosis for future use is minimal. Likewise, his onetime use of cocaine in 2012, a few weeks before his first deployment to Afghanistan, falls into this same category. He also expressed his intent never to use cocaine again. He has abstained from illegal drug use for five years. That abstinence is partially corroborated by the negative drug tests offered into evidence as part of his evaluation, and the annual tests, with negative results, which his employer required of him. His use of illegal drugs happened under circumstances unlikely to recur. His drug evaluation, the negative drug tests, and the positive recommendation from his coworker all support the conclusion that his past use does not affect his current reliability, trustworthiness, or good judgment. AG ¶ 26(a) applies. His five years of abstinence and his favorable prognosis from his drug evaluation is sufficient to demonstrate Applicant's intent not to use in the future. AG ¶ 26(b) 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.

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 facts and circumstances surrounding this case. I considered the Applicant's prior deployments, drug evaluation results, supportive character evidence, and negative drug tests. I also considered Applicant's statement of intent not to use drugs in the future. I also weighed his use of cocaine while holding a security clearance. Applicant provided sufficient evidence to mitigate the security concerns.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising 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:	FOR APPLICANT
Subparagraphs 1.a-1.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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert E. Coacher
Administrative Judge