



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



In the matter of:)
)
) ISCR Case No. 15-04198
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

02/13/2017

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline H, drug involvement. Eligibility for a security clearance is granted.

Statement of the Case

On December 11, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement. 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) effective within the DOD on September 1, 2006.

Applicant answered the SOR on February 3, 2016, and requested a hearing before an administrative judge. The case was assigned to me on October 5, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 19, 2016. I convened the hearing as scheduled on January 24, 2017. The

Government offered exhibits (GE) 1 and 2. Applicant testified and offered Applicant Exhibits (AE) A through D. All exhibits were admitted into evidence without objection. After the hearing he provided AE H, which was admitted without objection.¹ DOHA received the hearing transcript (Tr.) on February 1, 2017.

Findings of Fact

Applicant admitted both allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 51 years old. He has bachelor's and master's degrees. He has never been married and has no children. He has held a security clearance since 1996. He has worked steadily since 1996, and for his present employer, a federal contractor, since 2001.²

Applicant completed a security clearance application (SCA) in July 2014. In it he disclosed that in the past seven years he had illegally used marijuana about five times from approximately June 2012 to March 2014. He disclosed that he held a security clearance at that time. He further disclosed that he did not intend to use marijuana again because it is a violation of federal law and he did not "want to continue taking it."³

During Applicant's interview with a government investigator in January 2015, he again disclosed his prior marijuana use and confirmed his last use was in March 2014. He explained he smoked it a few times in social settings with people in a running group. He never purchased, cultivated, or manufactured it. He told the investigator he did not intend to use marijuana in the future.⁴

Applicant testified that he tried marijuana for the first time in July 2012 out of curiosity. He used it four more times to see if its effect was different. He did not intentionally look for an opportunity to use marijuana. Rather, it was passed around at a party and available. He does not know who provided it. He admitted he was drinking alcohol at the time, but does not believe he was intoxicated. He has never used any other illegal drug.⁵

Applicant testified consistently with his prior admissions. He explained he has contact with only one person from his running group who uses marijuana, but does not do so in his presence. He has not used marijuana since his last use in March 2014. He has not been in any setting where illegal drugs were present since March 2014. He

¹ Hearing Exhibit (HE) I is the Government's Exhibit list. HE II is its discovery letter.

² Tr. 9-10, 18.

³ GE 1.

⁴ Tr. 29; GE 2.

⁵ Tr. 22-24, 27-32, 36-37.

disclosed that his employer has a drug policy against illegal use of drugs. He was aware of the drug policy when he used marijuana. He admitted he used poor judgment. He is remorseful, understands the seriousness of his conduct, and deeply regrets his actions. He admitted he made a serious mistake.⁶

Applicant provided a written statement that he agrees to an automatic revocation of a security clearance for any violation of the drug involvement guideline, to include any drug abuse or any illegal drug use.⁷

Applicant provided a character letter from a coworker and friend whom he has worked with for more than 20 years and who also holds a security clearance. His friend is aware of Applicant's past marijuana use. He described Applicant as honest, forthright, and a person who observes the rules and regulations on handling classified material.⁸ Another coworker, who has known Applicant for 15 years, described him as trustworthy, reliable, punctual, faithful, and committed to fairness. Applicant's integrity and loyalty has never been questioned. It was noted that Applicant has made significant contributions to the development of new technology for the United States that has contributed to strengthen the military and the defense of the nation.⁹ Applicant provided a copy of a criminal history document from the county where he lives that shows his record is clear.¹⁰

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.

⁶ Tr. 23, 26, 33-35.

⁷ AE A.

⁸ AE B.

⁹ AE C.

¹⁰ Tr. 21; AE D.

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. Likewise, I have not drawn 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, 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 trustworthiness concern for 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 the disqualifying conditions for drug involvement under AG ¶ 25 and the following are potentially applicable:

(a) any drug abuse;

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

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

Applicant used marijuana five times from June 2012 to March 2014, while holding a security clearance. The above disqualifying conditions apply.

I have considered the mitigating conditions under AG ¶ 26. The following are potentially applicable:

(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 voluntarily disclosed his illegal marijuana use on his SCA and to the government investigator. He admitted he used it five times from June 2012 to March 2014 out curiosity. He does not intend to use it in the future. He signed a statement of intent with automatic revocation of clearance for any future violation. He understands the seriousness of his conduct while holding a security clearance and that it is a violation of his employer's drug policy. He no longer associates with those he previously used marijuana with, except for one person, who does not use it in Applicant's presence. Applicant is remorseful for his conduct. It has been almost three years since his last use of marijuana. I find a sufficient period of time has lapsed, the conduct was infrequent, it is unlikely to recur, and does not cast doubt on his current reliability or trustworthiness. Applicant has demonstrated his intention not to abuse any drugs in the future. I find AG ¶¶ 26(a) and 26(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 the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline H in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 51 years old. He self-reported his marijuana use on his SCA and to a government investigator. I found his testimony credible and forthright. His use of marijuana is aggravated because it occurred while holding a security clearance and in violation of his employer's drug policy. He credibly testified he tried marijuana due to curiosity and does not intend to use it in the future. It has been almost three years since his last use. He is remorseful and regrets his conduct. I have given considerable weight to the fact he self-reported his misconduct. Although his past marijuana use is serious, I am confident that he will not abuse illegal drugs in the future. I find Applicant has met his burden of persuasion. I do not have questions about his reliability, trustworthiness, and good judgment. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the drug involvement security concerns.

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 a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge