



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



In the matter of:

ISCR Case No. 15-04412

Applicant for Security Clearance

Appearances

For Government: Caroline E. Heintzelman, Department Counsel

For Applicant: *Pro se*

03/01/2017

Decision

CREAN, THOMAS M., Administrative Judge:

Based on a review of the case file and pleadings, Applicant failed to mitigate drug involvement security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on December 2, 2014, to obtain a security clearance required for a position with a defense contractor. (Item 3) After an interview conducted by a security investigator from the Office of Personnel Management (OPM) on January 15, 2015 (PSI), the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. (Item 4) On December 13, 2015, DOD issued Applicant a Statement of Reasons (SOR) detailing security concerns for drug involvement under Guideline H. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the Department of Defense on September 1, 2006.

Applicant answered the SOR on March 8, 2016. He admitted the ten allegations of illegal drug use under Guideline H. Applicant elected to have the matter decided on the written record. (Item 2) Department Counsel submitted the Government's written case on April 22, 2016. (Item 5) Applicant received a complete file of relevant material (FORM) on April 25, 2016, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely provided a response to the FORM on May 24, 2016 (Item 6). I was assigned the case on February 13, 2017.

Procedural Issues

Applicant was advised in the FORM that the summary of the PSI (Item 4) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate, and he could object to the admission of the summary as not authenticated by a Government witness. He was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that he waived any objection to the admissibility of the summary. In his response to the FORM, Applicant objected to consideration of the PSI because it was not authenticated. I will not consider the information in the PSI in my decision.

Findings of Fact

After thoroughly reviewed the case file and pleadings, I make the following findings of fact. Applicant is a 28-year-old college graduate who received a bachelor's degree in December 2011. After receiving his degree, he was unemployed from December 2011 until May 2012 when he was seeking employment. He worked as a junior accounting specialist from May 2012 until July 2014, when he was terminated because his company lost the contract he was working. He started work with his present defense contract employer in July 2014 as a financial analyst. He is not married and has not served in the military. This is his first application for a security clearance. (Item 3, E-QIP, dated December 2, 2014)

The SOR alleges, and Applicant admits, that he purchased and used marijuana from approximately 2004 until July 2014 (SOR 1.a and 1.b); that he purchased and used Adderall from approximately June 2007 until February 2012 (SOR 1.c and 1.d); that he purchased LSD once between November 2007 and November 2008 (SOR 1.e); that he used mushrooms on three occasions between November 2007 and November 2008 (SOR 1.f); that he used Xanax without a prescription between June 2010 and May 2014 (SOR 1.g); that he used Lorazepam without a prescription between June 2010 and May 2014 (SOR 1.h); that he used ecstasy in approximately October 2010 (SOR 1.i); and that he used cocaine in approximately November 2013 (SOR 1.J).

Applicant reported on his E-QIP that he used marijuana from August 2004 until July 2014. This equates to Applicant using marijuana in high school and college. He

used illegal drugs until July 2014 when he started working for his present employer. He noted that while in college from 2007 until 2011, he used marijuana on a regular basis, about a few times a week. In the last two years, however, he only used marijuana once. In the past three or four years, his use of marijuana has been curtailed to using only a total of three or four times.

Applicant admits in the E-QIP that he used Adderall in college to study and complete assignments from 2007 until 2011. He admits to using Adderall a few times in early 2012. In the early part of his college career, he used Adderall sparingly, but later in college, he used Adderall a few times a week. In his response to the FORM. Applicant admitted he used Adderall in September 2015. He regrets that he used Adderall at that time. (Item 3, E-QIP, at 29-31; Item 6, Attachment A)

Applicant admits in the E-QIP to using mushrooms three times and LSD one time in his first year of college. Since 2008, he has not used either controlled substance. He reports in the E-QIP that he used Xanax and Lorazepam at home when stressed as a sleep aid from June 2010 until May 2014. This coincides with his time as a college student. He also used cocaine at a concert one time in November 2013.

In the E-QIP, Applicant stated he does not intend to use illegal drugs again, and he no longer has a group of friends who use drugs. His career path is to work for the Government and he does not want to do anything that will jeopardize his career. In his response to the FORM, Applicant included a signed statement of his intent not to use illegal drugs again. (Item 6, Attachment B)

Applicant's performance rating from his employer shows ratings of highly satisfactory or outstanding. One of his company's project managers reported to Applicant's supervisor that Applicant is extremely competent and behaves in a professional and courteous manner. (Item 6, Attachment C) Another project manager wrote that Applicant is highly motivated, honest, and very conscientious. He is eager to learn and anxious to do a good job. He believes Applicant has matured and understands the requirements of character to be eligible for access to classified information. He believes Applicant can meet all requirement of a security clearance. (Item 6, Attachment D)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the Administrative Guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching

adjudicative goal is a fair, impartial and common sense 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. Likewise, I have avoided drawing 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, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by department counsel. . .” The applicant has the burden of persuasion to obtaining 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 protect or 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.

Analysis

Guideline H, Drug Involvement

The use of an illegal drug can raise questions about an individual’s reliability and trustworthiness, because it may impair judgment and raises questions about a person’s ability or willingness to comply with laws, rules, and regulations. Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction. Drugs are defined as mood and behavior altering substances, including drugs material and other chemical compounds identified and listed in the Controlled Substances Act of 1970. This includes marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens. 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)

Applicant admits using marijuana from 2004 until at least July 2014; using Adderall from June 2007 to February 2012; LSD once and mushrooms three times from November 2007 until November 2008; Xanax and Lorazepam without a prescription from June 2010 until May 2014; Ecstasy in October 2010; and cocaine in November

2013. His use was mainly when he was a high school and college student. Applicant's use of illegal drugs and controlled substances raises the following Drug Involvement Disqualifying Conditions under AG ¶ 25;

(a) any drug use; and

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

I considered the following Drug Involvement Mitigating Conditions under AG ¶ 26:

(a) the behavior happened so long ago, was so infrequent, or happened under such unusual 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 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.

While there is no "bright line" rule for determining when conduct is recent or sufficient time has passed since the incidents, a determination whether past conduct affects an individual's present reliability and trustworthiness must be based on a careful evaluation of the totality of the evidence. If the evidence shows a significant period of time has passed without evidence of drug involvement, there must be an evaluation whether that period of time demonstrates changed circumstances or conduct sufficient to indicate a finding of reform or rehabilitation.

These mitigating conditions do not apply. Applicant used marijuana in his teens and into his mid-twenties. His use initially was heavy and then tapered off. While most of his use of illegal drugs was during his time as a student, he continued to use illegal drugs after leaving college in December 2011. His last use of marijuana was in 2014, but he used Adderall as recently as September 2015. While most of his use of illegal drugs was during his time as a student, the use of marijuana after college graduation until June 2014, and Adderall as recent as September 2015 shows that his use can likely recur. Applicant has not indicated that he has been in a drug-abuse treatment program or received counseling for drug abuse.

Applicant has a history of drug abuse. In addition to marijuana, he used other illegal drugs such as cocaine, LSD, and prescription drugs. Applicant's substance abuse history indicates that he could easily slip back to substance abuse. Applicant was honest and forthcoming about his use of illegal drugs. Applicant seems to have matured and understands that the use of illegal drugs is detrimental to his career choices

requiring eligibility for access to classified information. Because of his use of illegal drugs through 2014 and recently in September 2015, Applicant has not met his burden to establish that he will not abuse illegal drugs in the future. It has been less than two years since he last used an illegal drug. There has not been an appropriate period of abstinence from use of illegal drugs. Applicant is only starting to change his lifestyle and circumstances and abstaining from the use of illegal drugs. The lifestyle changes and circumstances have not been so significant and long term that Applicant established that he will not use illegal drugs in the future. Applicant is on a path to not use illegal drugs, but more time and strength of changed circumstances is needed to establish that he will not use illegal drugs in the future. Applicant has not mitigated security concerns for drug involvement.

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 the facts and circumstances surrounding this case. Applicant admitted using illegal drugs from 2004 until September 2015. He is maturing and changing his life style and circumstances. Sufficient time has transpired in his abstinence from illegal drugs and a change in lifestyle and circumstances to indicate that he will not use illegal drugs in the future. Overall, these facts leave me with questions and doubts about Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for access to classified information. For all these reasons, I conclude that Applicant has not mitigated drug involvement and personal conduct security concerns. Eligibility for access to classified information is denied.

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

Subparagraphs 1.a -1. j: Against Applicant

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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge