



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 15-05487

Appearances

For Government: Douglas Velvel, Esquire. Department Counsel
For Applicant: Randy Reep, Esquire

11/16/2016

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline H, drug involvement and Guideline J, criminal conduct. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On February 26, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines H, drug involvement, and J, criminal conduct. The action was taken 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 September 1, 2006.

Applicant answered the SOR on April 6, 2016, and requested a hearing before an administrative judge. The case was assigned to me on August 4, 2016. The Defense

Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 16, 2016. I convened the hearing as scheduled on October 18, 2016. The Government offered exhibits (GE) 1 and 2, which were admitted into evidence without objection.¹ Applicant testified and offered Applicant Exhibit (AE) A which was admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on October 25, 2016.

Findings of Fact

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

Applicant is 30 years old. He graduated from high school in 2004 and attended college earning a bachelor's degree in a five-year-engineering program in 2009. He interned for an engineering firm while in college. After graduation he worked for an employer until March 2014. He was unemployed until May 2014 and worked for another employer until November 2014, when he left to work for his current employer, a federal contractor. He married in 2012 and has two children ages three years and six months.²

Applicant completed a security clearance application (SCA) in January 2015. In his SCA, he disclosed that from approximately October 2001 to August 2014, he "experimented several times with marijuana during high school and college. The nature of my use was recreational with friends. I do not recall how many times I used marijuana."³ He also indicated that he did not intend on using marijuana in the future as it no longer had a place in his life. He no longer is in "an atmosphere that is conducive to drug use."⁴ He stated that "I have grown up and have responsibilities that I did not have in college. Most importantly, I want to set an excellent example for my son to grow up and want to be the best husband for my wife."⁵

Applicant also disclosed that from October 2001 to June 2013, "while experimenting with marijuana, I was involved in purchasing the substance for personal use and consumption. I also attempted cultivation for personal use and consumption in 2008."⁶

¹ Hearing Exhibit I is the Government's exhibit list.

² Tr. 17-31; GE 1.

³ GE 1.

⁴ GE 1.

⁵ Tr. 33, 49-50; GE 1.

⁶ Tr. 49-50; GE 1.

In April 2015, Applicant was interviewed by a government investigator. He disclosed that he began using marijuana in high school when he was about 15 years old. He would use it several times a week. While in high school he purchased marijuana in small quantities for personal use once or twice a month. In college, he used marijuana about once or twice a week. He cut back on his use during college and did not smoke marijuana as much. After college he continued to smoke marijuana, but would not smoke as much and would stop altogether for a month or two while applying for jobs. He passed drug screen tests given by two former employers.⁷

In Applicant's answer to the SOR, he clarified that he was uncertain as to the dates he used marijuana, but intended to disclose the most inclusive dates.⁸ He also stated:

Finally, while it is important to me that I truthfully and accurately capture my limited involvement with marijuana, I think it would be very helpful for your office to understand this behavior is outside of my life as lived today. The activities of a child, albeit a college age child, do not have a place in my life as I endeavor to be the best father, husband, and American that I am able to be. I have been exposed to marijuana twice since the birth of my son in 2013, and those experiences were a stark reminder of the undertakings I left behind in college.

Applicant's parents became aware of his marijuana use during his junior year of high school. He stopped using it, and did not use it throughout his senior year of high school. He resumed using it in college.⁹

Applicant testified that he would stop using marijuana for a period before he applied for a job so he would pass the drug screen. He did this when he was hired as an intern during college and a pre-employment drug test was required and when he was hired for a full-time job after college. He has never been randomly drug tested. He admitted that after he got a job he would occasionally use marijuana. He admitted that the work he did for his former employers involved safety issues.¹⁰

Applicant testified he tried to grow marijuana in 2008. He was trying to grow it so he would not have to purchase it. He had three plants in his closet for about six to eight months. He stopped because it was too risky. His attempt to grow marijuana was unsuccessful.¹¹

⁷ Tr. 49-53; GE 2.

⁸ AE A is a duplicate of the answer to the SOR and sworn to before a notary.

⁹ Tr. 49-54, 62.

¹⁰ Tr. 40-43, 55-56.

¹¹ Tr. 34-35, 48-49, 54, 61.

Applicant testified that from 2009 to sometime in 2013, he used marijuana a few times a month in his home. He purchased it from people he knew used drugs. After his wife became pregnant, she told him he should be a better role model and that marijuana has no place in that role. He did not stop right away, but used the marijuana he had remaining, and then did not purchase anymore. He did not know why he did not stop when she became pregnant.¹²

Applicant testified that he used marijuana on two occasions since his son was born in September 2013. The first was a few weeks after his son was born, when he attended a wedding. A friend at the wedding provided him with the marijuana and he used it.¹³

The second was in August 2014 when Applicant and his wife attended a concert with friends. While at the concert, a “joint” was being passed around in the crowd. Applicant admitted to “taking a hit.” His wife did not use it. He does not recall who handed him the cigarette, but confirmed it smelled like marijuana. He admitted that his decision-making at the concert causes him concern in that he trusted someone that he did not know when he smoked the substance that was passed to him. He has not used marijuana since then and regrets his decision. Applicant testified he has never gone to work under the influence of marijuana or alcohol.¹⁴

Applicant admitted he understands that the use and purchase of marijuana is illegal. He has never been arrested or charged with criminal offenses. He is glad he no longer uses it. He believes because he has been honest by disclosing his past drug activities that the government can trust him. He does not intend to use marijuana in the future because he is more responsible. He stated that even if marijuana was legal, he would not use it. He regrets his conduct. He testified that he has excelled at his current job and takes his job responsibilities very seriously. He is pursuing a master’s degree.¹⁵

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

¹² Tr. 37, 39-40, 56-58.

¹³ Tr. 58-59.

¹⁴ Tr. 43-47, 59; GE 2.

¹⁵ Tr. 33-36, 46, 60, 63.

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.

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 Executive Order 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 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; and

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

Applicant purchased and used marijuana from approximately October 2001 to August 2014. In 2008, he attempted to cultivate marijuana. 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's use and purchase of marijuana over 13 years was more than experimental. He became a father in 2013 and had another child in 2016. Applicant now grasps the importance of being a good role model for his children. It has been more than two years since his last use. Applicant does not intend to use marijuana again. He has a promising career and future use is unlikely to recur. Applicant has put behind him his irresponsibly conduct. AG ¶ 26(a) applies.

Applicant no longer intends or is interested in using marijuana in the future because he wants to be a good husband and father. He has important responsibilities. He is in a different environment. It has been more than two years since his last marijuana use. He is excelling at his job. He acknowledged the mistakes he made. I find AG ¶ 26(b) has some application.

Guideline J, Criminal Conduct

AG ¶ 30 sets out the security concern relating to criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

I have considered the disqualifying conditions under criminal conduct AG ¶ 31 and the following two are potentially applicable:

- (a) a single serious crime or multiple lesser offenses; and
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant's marijuana use, purchase, and attempted cultivation were cross alleged under Guideline J, criminal conduct. He was never arrested or charged with any offenses, but his conduct was illegal. I find the above disqualifying conditions apply.

I have also considered all of the mitigating conditions for criminal conduct under AG ¶ 32 and the following two are potentially applicable:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

The same analysis under the drug involvement guideline applies under the criminal conduct guideline. It has been more than two years since Applicant was involved in illegal drug use. Applicant has matured and wants to be a good role model for his children. The evidence supports that future criminal behavior is unlikely to recur. AG ¶ 32(a) applies.

Applicant testified that he is excelling at his current job, and he is pursuing a master's degree. He regrets his past conduct. He is committed to not using marijuana in the future. Applicant fully disclosed his drug use and his testimony was candid. AG ¶ 32(c) 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 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 Guidelines, H and J in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a 30-year-old husband and father. He used marijuana in high school, continuing through college, and after graduation. Applicant fully disclosed all of his drug activity in his SCA and testified candidly about it. This shows he has matured, and he has put behind him conduct that would be detrimental to his future. He wants to be a responsible role model for his children. He is excelling at his job and is pursuing a master's degree. It has been over two years since his last use. I am convinced that Applicant will not use illegal drugs in the future.

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 the drug involvement and criminal conduct guidelines.

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
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	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