



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

In the matter of:

)
)
) ISCR Case No. 15-05503
)
)
)

Applicant for Security Clearance

Appearances

For Government: Andrew Henderson, Esquire, Department Counsel

For Applicant: *Pro se*

08/05/2016

Decision

WHITE, David M., Administrative Judge:

Applicant admitted sharing marijuana provided by friends about four or five times per year between July 2008 and July 2014. He stopped drug use when he obtained his master's degree and decided to apply for his current position. Resulting security concerns were mitigated. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on December 10, 2014. On February 17, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline H (Drug Involvement). 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (AR) on March 8, 2016, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 2, 2016, and the case was assigned to me on May 11, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on May 13, 2016, setting the hearing date for June 1, 2016.¹ I convened the hearing as scheduled. The Government offered Exhibits (GE) 1 and 2, which were admitted without objection. Applicant submitted Exhibit (AE) A, which was also admitted without objection. Applicant provided testimony from two witnesses, and testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on June 8, 2016.

Findings of Fact

Applicant is a 34-year-old employee of a defense contractor, where he has worked as an industrial hygienist since November 2014. He earned a bachelor's degree in 2005, and a master's degree in exposure science in June 2014. He has never held a security clearance and has no military service. He is married, and has one child born in February 2016. (GE 1; Tr. 7, 53.)

Applicant admitted, on his security clearance application, in his response to the SOR, and during his testimony, that he used marijuana approximately four to five times a year from July 2008 to July 2014. He candidly admitted this drug use, and his admissions are the only source of record information concerning these events. He used a small amount of marijuana that was provided by, and shared with, friends of his during social events. Often, but not exclusively, this took place while he was traveling to perform with a band of which he was a member during that period. He never purchased marijuana, used it by himself, or possessed it other than holding the marijuana that was being passed around on those occasions. (GE 1; GE 2; AR; Tr. 48-50.)

After finishing his master's degree and being recommended by one of his professors for employment in his current position, Applicant voluntarily stopped using marijuana and has abstained from any such use since July 2014. He knew that marijuana use, although legal under his local state's laws, was not permitted by his employer or while performing contract services on Federal installations. He had no desire to disqualify himself from such work over something that was unimportant to him. As he testified, "it was really never something that I was all that interested in or enjoyed

¹Applicant confirmed that he and Department Counsel discussed and agreed to this hearing date, and that he was ready to proceed without needing any additional time to prepare. He waived the 15-day notice that the Directive provides, and I granted him 28 days of additional time to submit evidence due to the pending holidays. (Tr. 11-12, AE A.)

that much, you know. Never enough to, like, do it on my own or, you know, buy it or anything. So it wasn't a difficult thing to give up." (Tr. 50-51.)

Applicant credibly testified that he intends to continue to abstain from any drug abuse and fully recognizes that such conduct is incompatible with holding a security clearance, and with working for his current employer or on a Federal installation. He signed a written statement of intent not to abuse any drugs in the future, with immediate revocation of his security clearance for any violation. (Tr. 13, 23-24; AE A.)

Applicant's immediate supervisor and her supervisor, who is a vice president of their company and Applicant's overall program manager, each took significant time off work to attend his hearing. They both have significant contact with Applicant on a regular basis, and testified about his dedication, trustworthiness, responsibility, hard work, integrity, and overall good character. Both of them have many years working in positions requiring security clearances and performing important work under defense contracts. Their testimony, in support of Applicant's overall fitness for holding a security clearance and complying with applicable security procedures, was credible and uncontroverted. (Tr. 26-44.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), which are to be 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or

mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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

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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. The DC raised by the evidence in this case is:

(a) any drug abuse.

Applicant admittedly used marijuana that was passed around a group of his friends on 25 to 30 occasions from 2008 until July 2014, when he decided to seek a position in which illegal drug use was not permitted. These facts support application of the foregoing DC, shifting the burden to Applicant to prove mitigation of resulting security concerns.

AG ¶ 26 provides conditions that could mitigate the security concerns. The facts in this case support application of two of them:

(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 abuse of marijuana was casual and occasional, in social settings with friends who were partaking. He voluntarily chose to stop such activity when he applied for his current position, and his use was removed in time and place from any work-related concerns. His free admission of this error in judgment is the only evidence that it took place, and supports the credibility of his intention not to repeat such conduct. The drug abuse ended two years ago while his living circumstances were far different than today, and there is compelling evidence that drug abuse is unlikely to recur. Substantial mitigation under AG ¶ 26(a) was accordingly established.

Applicant is now married with a young child, and is employed full time in a demanding professional position. He no longer engages in recreational activities where peer pressure to use drugs might exist. He has been abstinent since July 2014, and offered a signed statement of intent not to abuse drugs in the future. He also testified credibly concerning his regret about past drug abuse and intentions not to repeat it. These facts establish further strong mitigation under AG ¶ 26(b).

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 pertinent facts and circumstances surrounding this case. Applicant is a credible and mature individual who honestly admitted his previous occasional drug use, and has thereby substantially eliminated the potential for pressure, coercion, or duress. Recurrence of such conduct is unlikely, and his voluntary disclosure of that drug abuse further confirms his integrity and respect for compliance with security policies. The strong endorsements of his character by two experienced supervisors further confirmed his rehabilitation and reliability. Overall, the record evidence creates no doubt as to Applicant's present eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H: FOR APPLICANT

Subparagraph 1.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's eligibility for a security clearance. Eligibility for access to classified information is granted.

DAVID M. WHITE
Administrative Judge