



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXXXXX) ISCR Case No. 15-06008
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

08/11/2017

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case.¹ I deny Applicant's clearance.

On 20 August 2016, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guideline H, Drug Involvement.² Applicant timely answered the SOR, requesting a decision without hearing by the Defense Office of Hearings and Appeals (DOHA). The record in this case

¹Consisting of the File of Relevant Material (FORM), Items 1-3.

²DoD acted 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 1 September 2006. On 10 December 2016, the Director of National Intelligence (DNI) signed Security Executive Agent Directive 4, implementing new AG, effective with any decision issued on or after 8 June 2017. This decision is issued under the original AG, but I have examined the new AG to ensure that I would not reach a different result if I issued this decision under the new AG. I would not rule differently under either set of AG.

closed 2 December 2016, when Applicant's response to the FORM was due. Applicant provided no additional documentation. DOHA assigned the case to me 8 August 2017.

Findings of Fact

Applicant admitted the SOR allegation. He is a 53-year-old production planner employed by a defense contractor since January 2015. He was previously employed by different defense contractors from August 1989 to June 2012, and from December 2012 to October 2014. He has not previously held a clearance. Apparently, neither of the two earlier jobs required a clearance, but he now requires one for his employment.

Applicant used marijuana at varying frequencies from June 1979 to August 2014.³ He also bought user amounts of marijuana from February 2008 to October 2011.⁴ He used marijuana at home, frequently with his wife, to help him deal with anxiety and stress. He occasionally used in social settings. He reported his marijuana use on his March 2015 clearance application (Item 2), on which he was unequivocal about his future intent, recognizing that continued marijuana use was incompatible with holding a clearance. He confirmed these statements during a May 2015 interview with a Government investigator (Item 3). He also stated that his wife stopped using marijuana when he did, and that he had not seen the friend from whom he bought the marijuana since 2013.

Applicant submitted no work or character references, and provided no evidence of any community involvement.

Policies

The AG list factors to evaluate a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(d). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of a clearance. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline H (Drug Involvement).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government

³On his March 2015 clearance application (Item 2), he stated that there were periods when he did not use for years at a time, and periods when he used several times weekly.

⁴The drug use and drug purchase questions ask for use or purchase within the last seven years, but then ask specifically for the dates of first use and purchase. Applicant followed the instructions on his drug use, but limited his answer on his drug purchases to the last seven years, leaving open the issue of how he obtained his marijuana between June 1979 and February 2008.

must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the required judgment, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels deciding any reasonable doubt about an Applicant's suitability for access in favor of the Government.⁵

Analysis

The Government established a case for disqualification under Guideline H, by demonstrating Applicant's illegal drug abuse between June 1979 and August 2014, and his illegal drug purchases between at least February 2008 and October 2011, and Applicant did not mitigate the security concerns.⁶ Applicant used marijuana for 35 years. His use was illegal at all times. His use covered periods that he was employed by defense contractors, and despite the fact that he did not hold a clearance, it is unlikely that either employer tolerated illegal drug involvement. Moreover, Applicant has only been drug free for little more than a year.

Drug involvement mitigating conditions give little support to Applicant. His illegal drug abuse was recent, occasionally frequent, and the facts do not support circumstances (stress, anxiety) unlikely to recur.⁷ The record contains no evidence of what steps Applicant has taken to address his stress and anxiety without using marijuana. Further, his pattern of abstinence is less than two years, and while he has disassociated himself from his supplier, he still lives with his wife in the environment where most of his use occurred. Finally, his strongly-stated disavowal of future use does not constitute a statement of intent, either within the old guidelines or the new guidelines.⁸ Under the circumstances, I cannot conclude Applicant is unlikely to abuse illegal drugs in the future. Accordingly, I resolve Guideline H against Applicant.

⁵See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶¶25(a) any substance misuse; (c) illegal possession of a controlled substance, including . . . purchase. . . :

⁷¶26(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 [Emphasis supplied];

⁸¶26(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; and (3) a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility;

Formal Findings

Paragraph 1. Guideline H:	Against Applicant
Subparagraphs a-b:	Against Applicant

Conclusion

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

JOHN GRATTAN METZ, JR
Administrative Judge