



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



In the matter of:)
)
) ISCR Case: 15-06326
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esquire, Department Counsel
For Applicant: *Pro se*

03/30/2017

Decision

WHITE, David M., Administrative Judge:

Applicant has been a regular user of marijuana since 2003, and intends to continue using it with near-daily frequency. Under 50 U.S.C. § 3433 ("the Bond Amendment"), an unlawful user of a controlled substance may not be granted a security clearance. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of Case

On October 6, 2014, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP). (Item 4.) On March 28, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline H, Drug Involvement. (Item 1.) 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 for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD after September 1, 2006.

Applicant submitted his Answer to the SOR on April 20, 2016, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 4.) On June 16, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing seven Items, was mailed to Applicant on June 16, 2016, and received by him on June 21, 2016. The FORM notified Applicant that he could file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. On July 7, 2016, Applicant filed his Response to the FORM. Department Counsel did not object to the admissibility of Applicant's Response, which is marked Applicant's Exhibit (AE) A. DOHA assigned the case to me on March 6, 2017. FORM Items 1 through 5 and AE A are admitted into evidence. FORM Items 6 and 7 are not admitted into evidence because they are irrelevant, and no proper foundation for the admissibility of Item 6, under Directive ¶ E3.1.20, was established.

Findings of Fact

In his Answer, Applicant admitted each of the three SOR allegations concerning his drug involvement. His admissions are incorporated into these findings of fact. (Item 4.)

Applicant is 33 years old, and married with no children. He earned a bachelor's degree in 2006 and a master's degree in 2007. He has no military service and has never held a security clearance. He was hired by a Federal contractor in August 2014, as a program analyst, and is seeking a security clearance in connection with that employment. (Item 5.)

In his responses to questions in Section 23 of his e-QIP, concerning his illegal use of drugs or drug activity, Applicant disclosed that he had been regularly purchasing and using marijuana since approximately January 2003, for what he described to be therapeutic purposes. He described his frequency of use as, "on a near-daily basis . . . in very small quantities," and said he generally purchased about seven grams every two or three months. He said that he intended to continue purchasing and using marijuana in the future. He also disclosed having received a citation for possession of drug paraphernalia in June 2006, which was subsequently dismissed by the prosecutor. (Item 5.)

In his Answer, Applicant admitted using marijuana regularly and purchasing it periodically. He further admitted that he intends to continue using marijuana with near-daily frequency, but would abstain when such use would interfere with his ability to discharge his duties, when he was traveling, or when he did not think there was a

medical reason for use. (Item 4.) Applicant's Response contains no evidence suggesting that Applicant has any intention to stop his regular marijuana use. (AE A.)

The "Bond Amendment" (P.L. 110-181, Div A, Title X, Subtitle F, § 1072(a), 122 Stat. 328.) became law on January 28, 2008, and is codified at 50 U.S.C. § 3433. Subsection (a)(1) of that statute defines "controlled substance" in terms of 21 U.S.C. § 802(1), which includes marijuana without regard to whether it might be decriminalized under state or local laws for medical or recreational purposes. Subsection (a)(2) defines "covered person" to include "an officer or employee of a contractor of a Federal agency." Subsection (b) of 50 U.S.C. § 3433 reads:

(b) Prohibition. After January 1, 2008, the head of a Federal agency may not grant or renew a security clearance for a covered person who is an unlawful user of a controlled substance or an addict.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must normally consider the adjudicative guidelines. However, the undisputed facts of this case establish that Applicant is statutorily prohibited from being granted a security clearance.

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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish facts alleged in the SOR that have been controverted. Under Directive ¶ E3.1.15, an "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."

Analysis

Applicant's submission of evidence supporting his personal disagreement with the fact that the use of marijuana is illegal under Federal law for any purpose does not rebut, extenuate, or mitigate the admitted facts that he is, and intends to continue to be, an unlawful user of a controlled substance. The applicable Federal statute, 50 U.S.C. § 3343, prohibits granting him a security clearance, and provides no grounds under which exceptions or waivers to that prohibition may be granted. Accordingly, Paragraph 1 is found against Applicant.

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:

AGAINST APPLICANT

Subparagraphs 1.a through 1.c:

Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is statutorily prohibited, and therefore not clearly consistent with the national interest, to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE
Administrative Judge