



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



In the matter of:)
)
) ISCR Case No. 15-07826
)
Applicant for Security Clearance)

Appearances

For Government: Bryan J. Olmos, Esq., Department Counsel
For Applicant: Gregory F. Greiner, Esq.

02/16/2017

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the drug involvement security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On June 16, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, drug involvement. The action was taken under Executive Order (EO) 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) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on July 16, 2016, and requested a hearing before an administrative judge. The case was assigned to me on December 1, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 16, 2016, scheduling the hearing for February 2, 2017. The hearing was convened as scheduled. Government Exhibit (GE) 1 was admitted in evidence without

objection. Applicant testified and submitted Applicant's Exhibits (AE) A through J, which were admitted without objection. DOHA received the hearing transcript (Tr.) on February 13, 2017.

Findings of Fact

Applicant is a 31-year-old engineer for a defense contractor. He has worked for his current employer since December 2014. He is applying for a security clearance for the first time. He has a bachelor's degree that was awarded in 2009, and he attended graduate school after college, but he has not completed all the requirements for a master's degree. He has never married and has no children.¹

Applicant was an occasional marijuana user from about 2003 through late 2014. He also bought small amounts of marijuana with friends. He used cocaine on two occasions in 2013 and 2014, and he used ecstasy once in about July 2014. His drug use was while he was in college and graduate school, and later while he was working and playing a sport in a state that had loose drug laws.²

When Applicant accepted his current job in December 2014, he moved to a small city in a different state. He has not used any illegal drugs since he moved. His contact with the people he used drugs with is limited to electronic and social media. He disclosed his illegal drug use on his Questionnaire for National Security Positions (SF 86), which he submitted in February 2015. His company has a strict drug policy, and Applicant is subjected to random drug tests. He is highly regarded by his employer. Applicant knows that he could lose his security clearance and his job if he uses illegal drugs again. He credibly testified that he will not do so. He signed a statement of intent not to use any illegal drugs in the future, with automatic revocation of clearance for any violation.³

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 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, administrative judges apply the guidelines in conjunction with the 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

¹ Tr. at 11-15; GE 1.

² Tr. at 13, 17-26, 34, 37-54; Applicant's response to SOR; GE 1.

³ Tr. at 12-14, 17-23, 27-31, 35-39, 52-54; Applicant's response to SOR; GE 1; AE A-J.

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.”

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 the applicant or proven by Department Counsel.” The applicant 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 EO 10865 provides that adverse 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

The security concern for drug involvement is set out in AG ¶ 24:

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.

The guideline notes conditions that could raise security concerns under AG ¶ 25. The disqualifying conditions potentially applicable in this case include:

(a) any drug abuse;⁴ and

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

Applicant possessed and used marijuana, cocaine, and ecstasy. AG ¶¶ 25(a) and 25(c) are applicable.

AG ¶ 26 provides conditions that could mitigate security concerns. 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;

(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; and

(4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant was an occasional marijuana user from about 2003 through late 2014. He also bought small amounts of marijuana with friends. He used cocaine on two occasions in 2013 and 2014, and he used ecstasy once in about July 2014. He has not used any illegal drugs since late 2014. He fully disclosed his drug use on his SF 86. He realizes that such behavior is wrong and inconsistent with holding a security clearance. He has a good job with a strict drug policy in a new state. He is aware that he could lose his security clearance and his job if he uses illegal drugs again. He clearly, unequivocally, and credibly committed to remaining drug-free. He signed a statement of intent not to use any illegal drugs in the future, with automatic revocation of clearance for any violation. I find that he has abstained from illegal drug use for an appropriate period, and that illegal drug use is unlikely to recur. AG ¶¶ 26(a) and 26(b) are applicable.

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):

⁴ Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

(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 Guideline H in my whole-person analysis.

Applicant was a credible witness. He has a good job where he is highly regarded. I am satisfied that he has matured and that his illegal drug use is in the past.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the drug involvement security concerns.

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
Subparagraphs 1.a-1.d:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge