



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-07595

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel

For Applicant: *Pro se*

06/23/2017

Decision

HOWE, Philip S., Administrative Judge:

On January 26, 2015, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On June 14, 2016, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines H, F, and E.¹ 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.

Applicant acknowledged receipt of the SOR on June 24, 2016. He answered the SOR in writing on July 7, 2016, and requested a hearing before an administrative judge. Defense Office of Hearings and Appeals (DOHA) received the request on July 19, 2016. Department Counsel was prepared to proceed on August 31, 2016, and I received the

¹ I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines.

case assignment on September 19, 2016. DOHA issued a Notice of Hearing on February 27, 2017, and I convened the hearing as scheduled on March 15, 2017. The Government offered Exhibits 1 through 3, which were received without objection. Applicant testified and submitted Exhibits A through N, without objection. DOHA received the transcript of the hearing (Tr.) on March 27, 2017. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Motion to Amend SOR

Department Counsel moved to amend the SOR by changing the numbering on page 2 of the SOR to make the third allegation under Guideline E be numbered as “3” instead of “2.” Applicant had no objection to the amendment and I granted the motion. (Tr. 14)

Findings of Fact

In his Answer to the SOR Applicant admitted the factual allegations in Paragraphs 1, and 2 (with a partial denial) of the SOR, with explanations. At the hearing he denied Paragraph 3 of the SOR (Tr. 15). He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 38 years old, unmarried, and has no children. He has a master’s degree in electrical engineering. He works for a defense contractor. He started work there 15 years ago. He earns about \$100,000 annually. He has a security clearance and has had one for about a decade. (Tr. 25-29; Exhibit 1)

Applicant admitted “taking a puff” from a marijuana pipe offered to him by a friend at a social event on July 4, 2011. He denied using marijuana since then. He admitted he may have used it in high school “once or twice.” Applicant realized after the 2011 incident he should not have done it. He has not used any illegal drug since or before this one incident, other than the possible use in high school. He does not see the friend who provided the marijuana because he lives in a neighboring state. Applicant told his friend that he cannot use marijuana around him because of his security clearance and job. Applicant disclosed the marijuana incident on his e-QIP in Section 23 questions. Applicant does not currently associate with people who use marijuana. (Tr. 29-36; Exhibits 1, 2)

Applicant submitted a signed statement dated March 7, 2017, explaining the events of July 4, 2011, and that the other person involved was a high school friend. His statement referred to his disclosure of the incident on his e-QIP and the discussion with the investigating agent on March 19, 2015. This statement also stated Applicant would “not use illegal drugs and my intent to have my security clearance automatically be revoked for any future violation.” (Tr. 36; Exhibit N; Answer)

Applicant submitted a random voluntary drug test result from his employer. It showed a negative result for any illegal drugs. (Exhibit G; Answer)

Applicant did not file city income taxes for his former residence he was renting to tenants for the years 2012 to 2014. He did not realize he had to pay tax on the rental income for that property until he received a tax letter from the city government informing him he owed back taxes in February 2015. He filed the tax return for tax year 2011 in March 2012 because he had the taxes done professionally and lived in the house as his primary residence. After 2011 he completed his income tax returns himself without the rental income being calculated for his former residence. In February 2015, he learned he should have filed tax returns on the rental income for tax years 2012 to 2014. He accomplished those filings in April 2015. He paid taxes of \$26.70 on April 14, 2015. This tax matter is resolved. (Tr. 36-42; Exhibits 1-3, A-F)

Applicant submitted character statements from the co-founder and principal partner of his employing company, co-workers, a friend, and the friend's sister who is Applicant's girlfriend. All letters state Applicant is honest, dependable, and hard-working. He is also described as a talented research engineer and very professional. All the writers are aware of the security concerns about Applicant contained in the SOR. (Exhibits H to M)

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 and mitigating conditions, which are useful 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 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), 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 national security eligibility 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, 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.”

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 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.

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 and Substance Misuse

The security concern relating to the guideline Drug Involvement and Substance Misuse is set forth at AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

The guideline at AG ¶ 25 contains seven conditions that could raise a security concern and may be disqualifying. Three conditions are established:

- (a) any substance misuse (see above definition);

(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

(f) any illegal drug use while granted access to classified information or holding a sensitive position.

Appellant smoked marijuana one time on July 4, 2011. It was offered to him by a high school friend. He took one puff on a pipe filled with marijuana. He had a security clearance for his job at that time. Therefore, AG ¶ 25 (a), (c), and (f) are established.

The guideline at AG ¶ 26 contains four conditions that could mitigate security concerns. Two conditions may be 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) 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) providing 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.

Applicant admitted he used marijuana once in 2011. This use was six years ago. It so long ago and infrequent, a one-time use, that it is unlikely to recur and has not recurred in the intervening years. Applicant disclosed this action on his e-QIP and to the government investigator in 2015. This one act does not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. AG ¶ 26 (a) is established.

Applicant acknowledged his one-time marijuana use in 2011. He stated he does not see or associate with the person who gave him the marijuana because, in part, that person lives in another state. He also seems to have avoided situations or people who might use marijuana. He testified he has not been in the presence of people who use marijuana after that one incident. Applicant submitted a signed statement as an exhibit

stating his intent not to use illegal drugs and that such use is cause for the revocation of any security clearance he may have. AG ¶ 26 (b) is established.

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

(c) a history of not meeting financial obligations; and

(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant did not file his 2012 to 2014 city income tax forms to pay tax on his rental property income. Therefore, there is a three-year history of not meeting his lawful financial obligations. He failed to file the income tax returns with the appropriate city authority. AG ¶ 19 (c) and (f) are established.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Three conditions may be applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's tax problems happened between 2012 and 2014. He filed the required returns in 2015 as directed by the taxing authority. He paid \$26.70 in taxes. The tax error was the result of misunderstanding of tax obligations by Applicant in his local government. This misunderstanding has been corrected. The problem occurred three to five years ago, and was the result of unusual circumstances in that Applicant rented his former primary residence and did not understand he had to pay local income tax to the municipality. He had not paid the tax previously. Applicant resolved the tax problem. He filed the required forms immediately upon being notified of his error. He paid the taxes and the problem has not been repeated. AG ¶ 20 (a), (d), and (g) are established.

Guideline E: Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The guideline at AG ¶ 16 contains seven disqualifying conditions that could raise security concerns. Three disqualifying conditions may apply:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

(2) any disruptive, violent, or other inappropriate behavior;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing; and

(g) association with persons involved in criminal activity.

Appellant engaged in inappropriate behavior on July 4, 2011, by accepting a friend's offer to take a puff on a pipe containing marijuana. This action was also a rule violation by anyone who had a security clearance. This behavior created a vulnerability to exploitation, manipulation, or duress by someone else because it affected Applicant's personal, professional, and community standing. Lastly, Applicant's friend possessed marijuana to put it in the pipe and smoked it before offering it to Applicant. That friend was engaged in criminal activity. Therefore, AG ¶¶ 16 (d), (e), and (g) are established.

The guideline at AG ¶ 17 contains seven conditions that could mitigate security concerns. **Three** conditions apply:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant voluntarily revealed his marijuana incident on his e-QIP signed on January 26, 2015. He had not concealed anything, but was frank and honest in his disclosure when asked on the e-QIP about any marijuana use. The incident was four years prior to the e-QIP completion but Applicant remembered it and made a full disclosure. The offense was a one-time occurrence and has not been repeated. It is a minor incident and six years has passed since it occurred. The matter does not cast

doubt on Applicant's reliability, trustworthiness, or good judgment. Applicant's disclosure avoids any exploitation. He no longer associates with his high school friend who offered him the marijuana. AG ¶ 17 (c), (e), and (g) are established.

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 an applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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.

AG ¶ 2(b) requires each case must be judged on its own merits. 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. Applicant made one mistake on a drug use and had a tax misunderstanding. He disclosed or corrected both occurrences. They have not been repeated. There is nothing to diminish Applicant's current reliability, trustworthiness, or good judgment by either of the alleged security concerns. My comments regarding each guideline are incorporated here also.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his drug involvement and substance abuse, financial considerations, and personal conduct.

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

Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.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 eligibility for a security clearance. Eligibility for access to classified information is granted.

PHILIP S. HOWE
Administrative Judge