



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



In the matter of:

[NAME REDACT]

Applicant for Security Clearance

ISCR Case No. 15-07757

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

03/16/2017

Decision

MALONE, Matthew E., Administrative Judge:

Applicant used marijuana between 1980 and 2014. His illegal drug involvement also included a misdemeanor drug possession charge in 1990 that was later dismissed. Applicant's claim of abstinence for the past three years is not sufficient to mitigate the security concerns raised by a history of illegal drug use that has spanned more than half his life. His request for access to classified information is denied.

Statement of the Case

On May 27, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain or renew eligibility for access to classified information as required for his job with a defense contractor. During his background investigation, Applicant was interviewed on July 23, 2015, by a Government investigator. After reviewing the completed background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the national interest for Applicant to have access to classified information.¹

On December 2, 2015, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline H (Drug Involvement).² On

¹ Required by Executive Order 10865, as amended, and by the Directive.

² See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

February 22, 2016, Applicant responded to the SOR and requested a decision without a hearing. On April 21, 2016, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM)³ in support of the SOR. Applicant received the FORM on April 29, 2016, and was advised he had 30 days from the date of receipt to submit additional information in response to the FORM. The record closed after Applicant did not submit additional information by the May 29, 2016 deadline. The case was assigned to me on February 10, 2017.

Findings of Fact

Under Guideline H, it was alleged that Applicant used marijuana between June 1980 and June 2014 (SOR 1.a); and that in September 1990, he was arrested and charged with possession of a controlled dangerous substance (marijuana) and with drug paraphernalia with intent to use (SOR 1.b). Applicant admitted, with remarks, both allegations. Applicant had disclosed his drug use and drug-related arrest in his e-QIP. He also discussed that information his July 2015 interview. (FORM, Items 3 and 4) In addition to the facts established by the foregoing, I make the following findings of fact.

Applicant is a 51-year-old employee of a defense contractor. He has held his current job, an information systems position, since April 2015. (FORM, Item 3)

Applicant started using marijuana at about age 15. His use occurred in social settings about once or twice a month. Starting around 2004, his use declined to sporadic frequency. Applicant explained in his interview that he used marijuana less and less as he grew older and no longer associated with the same friends who used drugs. His last known use of marijuana was in about June 2014. At that time, was using it mainly to ease back pain. He characterized his use at that time as isolated. Applicant does not have a prescription for medical use of marijuana. (FORM, Items 2 - 4)

On February 2, 1990, Applicant was pulled over for speeding. A subsequent search of his car produced a small amount of marijuana and related paraphernalia Applicant admitted was his for personal use. Charges of possession of marijuana and possession of drug paraphernalia were later dismissed when the court deemed the search of his car to be improper. (FORM, Items 3 and 4)

Applicant claims he has not used marijuana since June 2014. He also claims he does not intend to use marijuana in the future. In his e-QIP he stated he “can take it or leave it. I do not intend to use the drug as I need a security clearance for my job.” (FORM, Items 3 and 4)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁴ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

- (1) The nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable

³ See Directive, Enclosure 3, Section E3.1.7. In the FORM, Department Counsel relies on four enclosed exhibits (Items 1 - 4).

⁴ Directive. 6.3.

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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOD based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.⁶ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁷

Because no one is entitled to a security clearance, applicants bear a heavy burden of persuasion to establish that it is clearly consistent with the national interest for them to have access to protected information.⁸ A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.⁹

Analysis

Drug Involvement

Available information supports both SOR allegations. The facts established herein raise a security concern addressed, in relevant part, at AG ¶ 24 as follows:

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.

More specifically, available information requires application of the disqualifying conditions at AG ¶¶ 25(a) (*any drug abuse (see above definition)*); and 25(c) (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or*

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

⁶ Directive, E3.1.14.

⁷ Directive, E3.1.15.

⁸ See *Egan*, 484 U.S. at 528, 531.

⁹ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

distribution; or possession of drug paraphernalia). I have also considered the following AG ¶ 26 mitigating conditions:

(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) dissociation 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 arrest in 1990, of course, is not recent. By itself the arrest poses no security concern. However, it is to be considered as part of the record as a whole regarding Applicant's involvement with illegal drugs. That record does not support any of these mitigating conditions. Applicant illegally used and possessed a controlled substance with varying frequency over the course of 34 years. The fact he last used marijuana almost three years ago, after using the drug for more than half his life, does not constitute a sufficient period of abstinence. For the same reason, his drug use is considered recent. Applicant claims, without corroboration, that he has changed his circumstances and no longer associates with persons with whom he used marijuana. His stated intent to not use marijuana in the future, as presented in his e-QIP, appears to be conditioned on his need for a clearance rather than on an understanding that his conduct is illegal. The record as a whole is not sufficient to resolve the doubts raised by the Government's information about Applicant's drug use. Security concerns established under this guideline are not mitigated. about Applicant's finances remain unresolved.

In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guideline H, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant has not produced sufficient information to resolve doubts about his suitability stemming from his drug use. Because protection of the national interest is the principal focus of these adjudications, those doubts must be resolved against the Applicant.

Formal Findings

Formal findings 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: AGAINST APPLICANT

Subparagraphs 1.a - 1.b: Against Applicant

Conclusion

In light of all available information, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge