



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



In the matter of:)
)
) ISCR Case No. 16-00842
)
)
Applicant for Security Clearance)

Appearances

For Government: Nicholas Temple, Esquire, Department Counsel
For Applicant: *Pro se*

12/05/2017

Decision

LYNCH, Noreen A., Administrative Judge:

On February 4, 2015, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On July 11, 2016, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H.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 July 29, 2016. He answered the SOR in writing, and requested a hearing before an administrative judge. Defense Office of Hearings and Appeals (DOHA) received the request, and Department Counsel was prepared to proceed on November 17, 2016, and I received the case assignment on

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.

August 14, 2017. DOHA issued a Notice of Hearing on September 26, 2017, and I convened the hearing as scheduled on November 17, 2017. The Government offered Exhibits 1 through 3, which were received without objection. Applicant testified and submitted Exhibits A through E, without objection. DOHA received the transcript of the hearing (Tr.) on December 1, 2017. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR Applicant admitted the factual allegations in Paragraph 1 of the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 63 years old, divorced, and has no children. He attended college for three years but did not obtain a degree. He has been employed with his current employer since 2001 as a contractor, and since 2005 as an employee. (Tr. 16) As a driver, he also possesses a commercial driver's license (CDL). He has held a security clearance since March 2005. (GX 1)

The SOR alleges that Applicant used and purchased marijuana with varying frequency from about December 2013 to approximately September 2014; failed a urinalysis test on September 16, 2014, testing positive for marijuana, and that the use of marijuana was while holding a security clearance.

Applicant credibly testified that his use of marijuana was during a nine-month period. (Tr. 31) Before that time, he had never used marijuana. He would smoke marijuana in his home while drinking. He stated that he had never been interested in marijuana because his choice was alcohol. (Tr. 31) He understands that this was a mistake and delusional thinking on his part. He explained that he began to feel disoriented and that he could not cope with his problems. He knew that the use of marijuana while holding a security clearance was illegal and in contravention of his workplace policy. (Tr. 33) He also knew that he was subject to random drug testing.

Applicant recalls that he was given marijuana at a music event outdoors (field party) for helping to fix the speakers. Another time was at a Christmas party when someone gave him a canister as a present. (Tr. 34) The third time a friend gave him some before she left the states. At a wedding some people were using marijuana and he asked if he could have some. He never actually purchased the marijuana. (Tr. 35) The amount of marijuana that was given to him would vary and he would use a little and take the rest home. He would use the marijuana at home while drinking. He would be alone. (Tr. 35) He did not use it when driving or at work. He felt that at first, it had a calming effect on him. (Tr. 36) The last use of marijuana was in September 2014 before the work drug test. (Tr. 36)

Applicant explained that in 2012, he and his ex-wife attended Alcohol Anonymous (AA) meetings because he realized that he was an alcoholic and that he

could not handle alcohol. He knew that it affected his well-being. His use of marijuana was a temporary escape from the pressures he felt after his mother died in 2010. He had not used marijuana before that time. He felt anxious living in his mother's home after she died. The home was burglarized twice in 2013 and 2014, and he was feeling very stressed. (AX D and E) The marijuana he used for the period of time specified was to supplement his alcohol use.

Applicant began attending AA in 2012. He also went to another particular group of men with whom he could relate and learn coping skills in dealing with life stress. He has a new social network and has a new perspective on life. He understands that he does not want to live life from a "deficit point of view." He is consciously aware of his problems and has a new outlook on life. He attended Narcotic Anonymous (NA) meetings for a while, but he was more comfortable with AA.

After Applicant's random drug screen in September 2014, which was verified as positive for marijuana, he was referred for an evaluation with a substance abuse professional. He completed an intensive outpatient treatment program for drugs and alcohol. (AX C) The program lasted eight weeks, and was led by licensed social workers, psychologists and psychiatrists. (Tr. 43). He attended group therapy. He was cleared for return to duty on December 26, 2014. He has a follow-up testing plan over a period of three years. The plan specifies that there are 14 tests in the first year; 10 tests in the second year; and eight tests in year three. He has now been enrolled in follow-up drug testing for one and a half years and his drug screens have remained negative. The testing continues through February 2018. (AX A) Applicant explained that he was told by his company that another positive drug test would most likely result in termination of his job. After the 2014 positive test, he was given a month suspension. (Tr. 37)

Applicant made no excuses for his use of marijuana. He does not drink at all. He uses his AA network as a "family". He has a structured routine which also allows him to stay on a path of abstinence. (Tr. 23) He does not associate with anyone who uses drugs. The AA has changed his contacts and social circle. He does activities with people who do not use alcohol or drugs. He attends church on a regular basis.

Applicant has learned healthy strategies for coping with life. He meditates, walks, reads and plays music. He started to exercise and has lost a great amount of weight. He feels positive around people who are not using alcohol or drugs. (Tr. 41) He has been sober for years and has no plans to use marijuana in the future. He has the use of the company's substance abuse program for six free sessions. He finds the work beneficial. He still attends AA meetings about three times a week. He is working on the steps of the program.

Applicant enjoys his work, is well liked, and plans to mentor persons in the company. He submitted a letter of recommendation from a supervisor, who reports that Applicant is reliable, punctual, and acts responsibly when completing work duties. She has known him since he was hired in 2005. He transports classified information on behalf of the company to agency locations. He has performed these responsibilities

successfully before and subsequent to his regulated treatment plan. Applicant is compliant with a rigid monthly random drug test protocol. (AX B)

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);
- (b) testing positive.....
- (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 over a period of nine months. He had a security clearance for his job at that time. Therefore, AG ¶ 25 (a), (b), (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 acknowledged his problem with marijuana use and alcohol. He was stressed at the time and needed an escape. He sought help after testing positive for a random drug test. He does not associate with any drug users. He has a new support network through his counseling meetings, his men's groups and AA. He has completed an intensive outpatient program and his employer stated as a condition of continued employment that all drug tests in the next years must be negative for drug use. He has changed his environment and was forthright and candid about his new life without the use of alcohol or drugs. All of the mitigating conditions apply.

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 has taken responsibility for his use of marijuana and explained how in stressful times, he complemented his alcohol use with the illegal drug. He has stopped drinking, attends AA meetings, and completed an intensive outpatient program. The incident occurred in 2014. He is subject to many random tests and will lose his job if he tests positive again. Moreover, he has become aware of how to cope without using alcohol or marijuana. He has a new circle of friends, has a healthy life style and is monitored at work. It was a breach of trust while holding a security clearance. He accepts responsibility for his mistake. He sought help and continues with counseling. He attends church and is more aware of coping strategies that are available to him. He clearly sees a future for himself without alcohol or drugs. He was candid and reflective at the hearing. He appeared open and honest. He has every intention to remain on a path of abstinence and responsibility. There is nothing to diminish Applicant's current reliability, trustworthiness, or good judgment. My comments regarding the 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.

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
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.

Noreen A. Lynch
Administrative Judge