

on August 14, 2017. DOHA issued a Notice of Hearing on September 28, 2017, and I convened the hearing as scheduled on December 8, 2017. The Government offered Exhibits 1, 2, and 3, which were received without objection. Applicant did not testify, but presented three witnesses. He submitted one Exhibit (AX A), without objection. DOHA received the transcript of the hearing (Tr.) on December 18, 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 allegation 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 35 years old, not married, and has no children. He graduated in 2012 and obtained an undergraduate degree in information technology (IT). He has been employed as a network engineer with his current employer since 2011. (Tr. 15) He has not held a security clearance. (GX 1)

The SOR alleges that Applicant used marijuana with varying frequency from September 2002 to approximately the summer of 2015.

Applicant credibly testified that his use of marijuana started when he was with college classmates. He recalled that his use was probably about once per year. Although he disclosed on his SF86, he listed three to four times a year. He said it is not something that he typically engages in, and was probably too aggressive in answering the question. It would usually occur in someone's home party. He added that he had stretches of time when he did not use marijuana. (Tr. 43) He recalled that from 2015 until the present (December 2017), he has not smoked marijuana. He stated that he would give some money to the people who gave him some marijuana. He noted two friends who would provide the marijuana. He still sees them a few times a year, but Applicant's girlfriend testified that when Applicant comes home after he has seen those two friends, there have been no indications of marijuana use. He7 has not been around them when they are smoking marijuana and does not know if they still smoke marijuana. (Tr.44) He has never tested positive from a drug test. He understands that this was illegal and that it is a serious responsibility to obtain and hold a security clearance. (Tr. 32) He does not believe he is unfit to hold a security clearance. He has no criminal record.

Applicant stated during his investigative interview that he used marijuana from September 2002 until January 2014. He explained that he started using it because people had it in social settings. He used it in social settings three to five times per year and does not intend to use it in the future. He compared it to social drinking. He stated that it is not a habit and his current social circle does not comprise illegal drug users. He stated that the effect was relaxing and made him sleepy. He noted that he had been offered marijuana after he completed his security clearance application, but he refused

it. (GX 2) He has never used any other illegal drugs. He submitted his driving record to show that he has no violations of any kind. He has never used marijuana at work or tested positive.

Applicant's three witnesses testified that Applicant has never had any issues at work. Each witness was aware of the security concern concerning use of marijuana. His team leader testified that Applicant is one of the most exceptional members of his team. Applicant's team lead believes he is trustworthy and reliable. (Tr. 19) He has never had any disciplinary issues. At outside work events, he has never witnessed any inappropriate behavior with drinking or drugs. (Tr. 21) He has known Applicant since 2013.

Another witness, who is a colleague of Applicant and has known him for six years, testified that Applicant is trustworthy and reliable. She and her friends also socialize with Applicant. She has never seen Applicant use marijuana. She holds a security clearance. She has gone to movies, restaurants, and activities with Applicant and other friends and has never met the two friends who Applicant received marijuana from in the past. (Tr. 28)

Applicant's significant other with whom he lives, testified that she has known him for over ten years. They have lived together for about one year. She has never seen him under the influence of marijuana or any other drug. She has never seen any addictive behavior concerning alcohol or drugs. She did meet one of the friends who smoked marijuana in the last year or so. She testified that Applicant sees him a few times a year. (Tr. 34) Applicant told his girlfriend about his prior use of marijuana when they met. She has no reason to believe that Applicant is using marijuana.

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. Two 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

Applicant smoked marijuana with varying frequency from 2002 until 2015. Therefore, AG ¶ 25 (a) and (c) 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 disclosed his use of marijuana on his security clearance application. He spoke about it during his investigative interview. He stopped smoking marijuana and does not intend to use any illegal drugs in the future. He has not used marijuana since 2015. He lives with his significant other and socializes with colleagues who do not use illegal drugs. He has excellent work references, and was forthright and candid when answering questions. He provided three witnesses to speak on his behalf. 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 disclosed his use of marijuana on his security clearance application and discussed it in his investigative interview. The minor inconsistencies between what he reported on his application and later said during his the clearance process about his marijuana use was immaterial. It does not detract from the candor he showed in disclosing the information voluntarily and then discussing it in detail. The last marijuana use was in 2015. He is subject to random tests. He was candid and reflective at the hearing. He appeared open and honest. He has every intention to remain responsible concerning the use of illegal drugs. There is nothing to diminish Applicant's current reliability, trustworthiness, or good judgment. His work references are excellent. He is now living with his girlfriend who does not use marijuana.

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 use of marijuana.

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: 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