



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



In the matter of:)
)
) ISCR Case No. 16-03639
)
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

06/01/2018

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant failed to mitigate concerns related to his history of illegal drug use and criminal conduct. He also intentionally falsified his 2006 security clearance application. Applicant's continued access to classified information is denied.

Statement of the Case

On February 2, 2017, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the drug involvement and substance misuse, personal conduct, and criminal conduct guidelines.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant's security clearance and recommended that the case be submitted to an administrative judge for a determination whether to deny his security clearance.

¹ The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on September 1, 2006.

Applicant answered the SOR and requested a decision without a hearing.² The Government submitted its written case on April 11, 2017. A complete copy of the file of relevant material (FORM) and the Directive were provided to Applicant. He received the FORM on April 18, 2017, He did not respond. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 6, without objection.

Procedural Matters

While the case was pending decision, the Director of National Intelligence (DNI) issued the Security Executive Agent Directive 4, establishing the National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The 2017 AG superseded the AG implemented in September 2006, and they are effective for any adjudication made on or after June 8, 2017. Accordingly, I have applied them in this case.

Findings of Fact

Applicant, 36, has worked for his employer, a federal contractor, since September 2001. He started as an apprentice and has been promoted to an area manager position. Applicant applied for a security clearance in March 2006, disclosing monthly marijuana use from October 1998 to September 2001. He was granted access to classified information in June 2006.³

In the years following his 2006 security clearance application, Applicant married, fathered two children, and became a homeowner. He completed his most recent security clearance application in April 2016 and disclosed two alcohol-related criminal incidents. In February 2016, after consuming alcohol, Applicant was arrested and ultimately convicted of leaving the scene of an accident. He was arrested again in March 2016 for driving under the influence of alcohol (DUI). However, the DUI charge was dismissed and Applicant was convicted of the lesser charge of failure to submit to alcohol testing. He self-reported both incidents to his facility security officer.⁴

Applicant also reported that he used marijuana a few times per month from December 1997 until 2007.⁵ After 2007, Applicant reported that he continued to use the drug occasionally until August 2014. He explains that his marijuana use was purely recreational and asserts that he has not used the drug since 2014, citing his children, now ages 7 and 10, as the reason for his discontinued use. While he acknowledges that the 2006 security clearance application may have inaccurate information regarding his

² GE 1.

³ GE 3.

⁴ GE 1-3, 5-6.

⁵ On the April 2016 security clearance application, Applicant reported that he used marijuana, "recreational[ly] a few times per month until 1007, then rarely used at all." In his August 2016 background interview, Applicant acknowledged the "1007" date was a typo and should have read 2007. GE 4.

drug use, the inaccuracy was not done deliberately, but was his best recollection when he completed the application. He denies consuming marijuana to the point of impaired judgment or reporting to work under the influence of drug. Applicant states that he does not intend to use marijuana in the future.⁶

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 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.

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.

⁶ GE 1, 3-4.

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

The record contains evidence to support the Government’s *prima facie* case that Applicant engaged in disqualifying conduct under the drug involvement, criminal conduct, and personal conduct guidelines. He did not provide sufficient evidence to mitigate any of the alleged concerns.

Drug Involvement and Substance Misuse

Applicant admits using marijuana from 1997 to 2014. The illegal use of controlled substances can raise questions about an individual’s reliability and trustworthiness, 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.⁷ Applicant’s 17-year history of drug use is disqualifying on its own and is exacerbated by his continued use of marijuana after being granted access to classified information in 2006.⁸

Even though Applicant’s last reported use of marijuana occurred two years ago, the conduct is not mitigated by the passage of time. Applicant’s use of illegal drugs did not occur under unusual circumstances, each use occurred in a social setting. The record does not contain any evidence to indicate that Applicant’s use of illegal drugs was caused by substance dependence or abuse issues, emotional or physical problems, or any form of duress. It was recreational and intentional. Applicant has expressed his intent not to use drugs in the future. However, he has not presented anything to guarantee this statement, such as a signed statement of intent with revocation for any future violations. Given his pattern of disregard of federal law and his responsibilities as a clearance holder, Applicant’s promises to abstain from future marijuana use carry little weight. Applicant’s history of illegal drug use continues to reflect negatively on his ongoing security worthiness.

Criminal Conduct

Criminal conduct creates doubts about a person’s judgment, reliability, and trustworthiness. It also calls in to questions a person’s ability or willingness to comply with law, rules, and regulations.⁹ Applicant was convicted of two alcohol-related crimes in 2016. While the 2016 incidents standing alone would be unlikely to affect a national security eligibility decision, when considered in combination with his other uncharged

⁷ See, AG ¶ 24.

⁸ AG ¶¶ 25(a) and (f).

⁹ AG ¶ 30.

criminal conduct, almost 20 years of illegal drug use, Applicant has demonstrated a pattern of poor judgment that casts doubt on his ability to maintain access to classified information.¹⁰ The conduct is not mitigated for the reasons given in the drug involvement and substance misuse section, above. Given his long history of criminal conduct, Applicant has not presented sufficient evidence of successful rehabilitation to assuage any concerns that he may engage in criminal conduct, either alcohol or drug related, in the future.

Furthermore, Applicant's eventual self-reporting of his illegal drug use and his contemporaneous reporting of his two alcohol-related criminal conduct does not change the security significance of the underlying conduct. Here, Applicant engaged in an activity he knew to be in direct contravention of federal law and his responsibilities as an individual holding a security clearance. His behavior showed a disregard for the law, regulations, and the fiduciary relationship he voluntarily entered into with the Government when he was granted access to classified information.

Personal Conduct

Applicant's history of illegal drug use and criminal conduct are cross-alleged under the personal conduct guideline. The alleged misconduct is independently disqualifying under those specific guidelines and has been considered under the relevant disqualifying and mitigating conditions as discussed above. However, the allegation that Applicant falsified his 2006 security clearance application warrants scrutiny under the personal conduct guideline.

On his 2006 security clearance application, Applicant reported that he used marijuana from 1997 to 2001. On his April 2016 application, Applicant reported his marijuana use as being continuous from 1997 to 2014. He claims that the disclosures on his 2006 application were his best recollection at the time. This claim is not credible. It is unlikely that Applicant's memory of his drug use between 2001 and 2006 is more accurate a decade later than it was at the time he completed the 2006 application. Furthermore, the truthful disclosures on the 2016 application do not immunize the earlier falsification from a subsequent security review.

An applicant is expected to provide full, frank, and candid disclosures to the Government at all times. Anything less provides a rational basis for a finding against an applicant's security worthiness. Applicant's disclosure on his 2006 security clearance application was not due to an inaccurate memory, it was an intentional and material misstatement of fact on a document used to determine national security eligibility.¹¹ A statement is material when the concealed information would have the potential to influence a decision or action. Applicant's omissions in his previous adjudication prevented the Government from properly vetting his overall security worthiness. It is unlikely that Applicant would have been granted access to classified information, if he admitted contemporaneous drug use.

¹⁰ AG ¶ 31(a).

¹¹ AG ¶ 16(a).

Whole-person Concept

Based on the record, I have significant reservations about Applicant's current security worthiness. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). The purpose of the security clearance adjudication is to make "an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk."¹² During the current adjudication, Applicant revealed conduct that supports a negative whole-person assessment of his judgment, reliability, and trustworthiness. His behavior also casts doubt on his ability to follow rules and regulations and demonstrates a disregard for his fiduciary relationship with the government. Accordingly, his continued access to classified information is denied.

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, Drug Involvement and Substance Misuse:	AGAINST APPLICANT
Subparagraphs 1.a – 1.b:	Against Applicant
Paragraph 2, Personal Conduct:	AGAINST APPLICANT
Subparagraphs 2.a – 2.d:	Against Applicant
Paragraph 3, Criminal Conduct:	AGAINST APPLICANT
Subparagraphs 3.a:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for continued access to classified information is denied.

Nichole L. Noel
Administrative Judge

¹² AG ¶ 2(d).