



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



In the matter of:)
)
) ISCR Case No: 16-03643
)
Applicant for Security Clearance)

Appearances

For Government: Brittany Muetzel, Esquire, Department Counsel
For Applicant: *Pro se*

1/12/2018

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant mitigated the security concerns raised under Guideline H for drug involvement and Guideline E for personal conduct. Based upon a review of the pleadings and exhibits, national security eligibility is granted.

Statement of Case

On December 21, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline H, Drug Involvement and Substance Abuse, and Guideline E, Personal Conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, (AG) effective within the DoD after September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.¹

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

Applicant answered the SOR, and requested a hearing before an administrative judge. The case was assigned to me September 26, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 21, 2017, scheduling the hearing for December 19, 2017. The hearing was convened as scheduled. Government Exhibits (GX) 1-2 were admitted into evidence without objection. Applicant testified but did not submit documentary evidence. DOHA received the hearing transcript (Tr.) on December 27, 2017.

Findings of Fact

Applicant admitted the two SOR allegations under Guideline H. He denied the SOR allegation under Guideline E and provided an explanation. His admissions are incorporated into these findings of fact.

Applicant is 23 years old and single with no children. He obtained his undergraduate degree in May 2016. When he was in high school he was an intern with a defense contractor. When he was in college in 2016, he completed the current January 20, 2016 security clearance questionnaire. He is now employed as a network engineer for the same employer. He has held a security clearance since June 2013. (GX 1).

The SOR alleges that Applicant used marijuana with varying frequency from 2013 to at least 2014. It further alleges that he used marijuana after being granted a security clearance in April 2013. The SOR also alleges that Applicant falsified material facts on his security clearance application, in response to Section 23 – Illegal Use of Drugs while possessing a security clearance.

Applicant credibly testified that he does not use alcohol and that he has no intention of using marijuana again. He was a sophomore in college and made a mistake. (Tr. 12) Applicant used the marijuana at a friend's house late at night on October 2013, and he decided to try it since the others were smoking marijuana. (Tr. 17) He did not pay for the marijuana. Applicant stated that his second use was at a friend's house in February 2014. (Tr. 17) This is the only time that Applicant smoked marijuana. One of the people was his college roommate. He is no longer close to him, but occasionally texts him. He has no close friends who smoke marijuana. He has not used since then because he has no need to do so. He believes he has no dependence on the drug. It made him feel tired and sleepy.

During Applicant's investigative interview in April 2016, he told the interviewer the same thing concerning his use of marijuana. He does not want to lose his job and it was an experimental use while in college. (GX 2) He has not used any other illegal drugs.

On January 20, 2016, Applicant submitted a security clearance application (SF-86). In it he did not disclose any use of marijuana. He denied that it was intentional or that he falsified his application. He stated that it was an oversight and explained that the electronic form was already filled in and he just put any address or job change. He

hurriedly finished the form without changing anything else on the form. (Tr. 13) He overlooked the section. He discussed the use during his interview and said it was a mistake. He is aware that using an illegal drug is against the law and company policy. In fact, in reviewing the summary of the interview, Applicant discovered that he did not list two step-sisters and the correct dates for unemployment. He also did not provide a correct phone number. He was rushing through the application.

Applicant explained that when completing his SF-86, he was wrong to rush but he began to skim the form after he put new information for address, etc. (Tr. 21) In addition, when Applicant smoked a puff of marijuana in 2013, he was in school and not actively working for the company. (Tr. 26) He has been drug tested with negative results. (Tr. 23)

Applicant is focused on his work and career. He has matured and his decisions are based on long- term life goals. He spends time with his family since graduating from college. He lives with his mother. (Tr. 29)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 applying for national security eligibility seeks to enter 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 national security eligibility. 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 or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline H: Drug Involvement and Substance Misuse

AG ¶ 24 describes the security concerns related to this guideline:

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.

AG ¶ 25 sets out conditions that could raise security concerns and may be disqualifying in this case. Three are potentially applicable:

- (a) any substance misuse (see above definition);
- (b) testing positive for an illegal drug; and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant illegally used marijuana twice from 2013 to 2014. He held a security clearance at the time. The evidence raised the above disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

AG ¶ 26 lists three conditions that could mitigate security concerns raised under this guideline:

(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;

(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;

(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; and

(d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant acknowledged his experimentation with marijuana on approximately two occasions in 2013 and 2014. He was in college and decided to use the offered marijuana at a home party. He knows it was wrong. He has never used any illegal drug since the 2014 incident. He graduated from college, has full-time employment and has changed his circle of friends. He has never tested positive for illegal drugs. He has no criminal history. He was emphatic that he never intends to use any illegal drug in the future. He has been working for a contractor while in high school and college. There are no reported incidents of security violations. He has accepted responsibility for the mistake that he made when he was 19 years old. It is true that he received a security clearance in 2013. Given his short use, his statements are sufficient to establish mitigation under AG ¶ 26(a) and (b).

Guideline E: Personal Conduct

AG ¶ 15 explains the security concerns relating to personal conduct:

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.

AG ¶ 16 describes a condition that could raise a security concern and may be disqualifying in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied that he falsified his security clearance application in 2016. He agrees that the information about his two time use of marijuana in college was not listed in Section 23. He explained that he was rushing through the form. During his investigative interview, he noted that he omitted other information such as correct phone number or his two step-sisters. He was credible that he did not intend to falsify his SF-86. He spoke candidly at the hearing and during his interview concerning the use. The evidence fails to establish the above disqualifying condition. This guideline is found in his favor; hence a discussion of mitigating conditions is not relevant.

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 the applicant's conduct and all relevant 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.

According to 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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is 23 years old. He made a mistake when he was in college and smoked marijuana on two occasions. He worked as a high school and college intern for the defense contractor, who sponsored him for a clearance. He graduated from college in 2016. He has not used any marijuana or any other illegal drug. He does not intend to. He has changed his environment of friends. He is mature and lives with his mother and spends time with his family.

Overall, the record evidence does not leave me with doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He met his burden to mitigate the security concerns arising under the guidelines for drug and personal conduct.

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, Guideline H:	FOR APPLICANT
Subparagraphs 1.a through 1.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.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 a security clearance. National security eligibility is granted.

NOREEN A. LYNCH
Administrative Judge