



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



In the matter of:)
)
) ISCR Case No. 17-00777
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esquire, Department Counsel
For Applicant: *Pro se*

February 20, 2017

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline E, Personal Conduct. Applicant's eligibility for a security clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA-2) on January 31, 2016. On May 11, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 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 (AG) effective within the DoD on September 1, 2006. On June 8,

2017, new AGs were implemented and are effective for decisions issued after that date.¹

Applicant answered the SOR on June 6, 2017 (Answer). The case was assigned to another administrative judge on June 29, 2017, and reassigned to me on July 5, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on August 7, 2017. I convened the hearing as scheduled on September 25, 2017. The Government offered Government Exhibits 1 through 3, which were admitted without objection. Applicant testified on his own behalf, and presented Applicant Exhibits (AE) A and B, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on October 4, 2017. The record then closed.

Findings of Fact

Applicant admitted the allegations cited as SOR ¶¶ 1.a and 1.b. He denied the allegations cited as SOR ¶¶ 1.c, and 1.d. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 34 years old. He is single and has no children. He attended college from 2002 to 2008, and earned a bachelor's degree and a master's degree. He has worked for his employer, a Government contractor, since 2009. He is a systems engineer. (GE 1; GE 3; Tr. 16-17, 20-23.)

Applicant certified his first security clearance application (SCA-1) on May 5, 2009, verifying that all of his answers were "true, complete, and correct." (GE 3.) However, when answering question 23a, he indicated that within the previous seven years he had not used any controlled substances, to include marijuana. He deliberately failed to disclose that he experimented with marijuana while in college between 2005 and 2008. (GE 2; GE 3; Tr. 17-19, 24-28, 44.) During the hearing, he classified his usage as sparse throughout those years. (Tr. 24.) He explained that "when I filled out my form in 2009, I did falsify information and I was naïve at the time in understanding the entire security process and the gravity of falsifying information." (Tr. 19.)

Applicant was granted a security clearance in 2009. Despite possessing a clearance, he chose to use marijuana again in December 2013. His office was relocating out of state and he was depressed. He decided to join his fellow employees in smoking marijuana at a friend's house. (GE 2; Tr. 17, 28-30.) He took "a handful of puffs." (Tr. 29.)

Applicant applied to renew his security clearance in 2016 and completed SCA-2. On SCA-2, he failed to disclose his use of marijuana and his use of marijuana while holding a security clearance when he answered Section 23. (GE1; Tr. 32-33.) He

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.

testified that he had forgotten about his 2013 marijuana use when completing SCA-2 in 2016. (Tr. 44-45.) However, when he spoke to an investigator in January 2017 he was prompted with questions about his prior state of residence and his recent visit home, which refreshed his memory. "It jogged memories of my 2013 usage and I realized that despite the penalties, I should in good faith discuss my usages." (Tr. 20.) He testified that he failed to bring up his marijuana use in his July 2016 security clearance interview because he did not recall his marijuana use at that time. It was only after he visited his hometown in December 2016, and saw an old friend, that he recalled his marijuana use in 2013. (Tr. 34-35, 45.)

Applicant has not used marijuana since December 2013. Marijuana is the only illegal drug he has ever used. (Tr. 30-31.) He does not associate with drug users. (Tr. 36.) He testified:

I don't drink as much. I don't party. I eat a lot more healthier, basic, you know, things like that. I'm more focused on my -- my career and I'm trying to start a family. I don't know exactly what -- it's hard to define 'cause I thought I was pretty mature then. So most of the maturity is in self-confidence, I guess you can say. And I have learned a lot in that respect. (Tr. 45.)

Applicant's friends and coworkers find him reliable and trustworthy, despite knowledge of his drug use and falsification. (AE A; AE B.) His manager finds him to be "hardworking and innovative." (AE B.) Another manager highlighted that Applicant was the 2017 recipient of a prestigious quality award, and earned a leadership award in August 2017. (AE B.) He performs successfully on his assignments and demonstrates high-quality work. (AE B.)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (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. Directive ¶ E3.1.15 says that 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 *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for 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 information 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 conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(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; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Applicant was aware he was required to disclose his marijuana use while in college on SCA-1, and his 2013 drug use while possessing a security clearance on SCA-2, when he completed and certified the truth of his answers on those forms. His claim to have forgotten his 2013 drug use when he denied it on SCA-2 was not credible. Additionally, his drug use while holding a security clearance is an activity which, if known, could adversely affect his personal, professional, or community standing. There is sufficient evidence to raise these disqualifying conditions under AG ¶ 16.

The guideline also includes conditions that could mitigate security concerns arising from Applicant's personal conduct. I have considered the following potentially applicable mitigating conditions under AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant admitted in his Answer to falsification of his 2009 SCA. His efforts to correct that omission were neither prompt nor done in good faith. He also deliberately omitted his 2013 marijuana use on SCA-2. Applicant's omissions were deliberate attempts to conceal serious conduct issues, and cast doubt on his reliability, trustworthiness, and good judgment. There is insufficient evidence to raise mitigation under AG ¶ 17(a).

Applicant has presented some evidence of mitigation under AG ¶¶ 17(c) and 17(d). His marijuana use was infrequent and his most recent use occurred under the stressful circumstance of his office closing and relocating out of state. He has also matured since 2013 and drinks less alcohol. He now focuses on his health. He no longer associates with drug users. However, his recent choice to use marijuana while holding a security clearance weighs heavily against mitigation.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility 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 pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guideline E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 34 years old and has worked for his present employer since 2009. He was aware that he had used marijuana from 2005 to 2008, and again in December 2013. Applicant's deliberate failure to disclose this relevant adverse information on either of his SCAs is a matter "of special interest" under the Guideline, and raises serious concerns. Additionally, his choice to use marijuana while holding a security clearance raises questions about his judgment, reliability, and trustworthiness. Overall, the record evidence leaves me with serious questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the personal conduct guideline.

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 E:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. National security eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge