



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



In the matter of:

ISCR Case No. 17-01135

Applicant for Security Clearance

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

07/20/2018

Decision

DAM, Shari, Administrative Judge:

Applicant mitigated the drug involvement and substance misuse security concerns. National security eligibility for access to classified information is granted.

History of Case

On June 7, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline H (Drug Involvement and Substance Misuse). 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), which were effective within the DOD on 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 AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

Applicant answered the SOR in writing on June 23, 2017 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to another administrative judge on August 16, 2017, and reassigned it to me on February 21, 2018. DOHA issued a Notice of Hearing on March 13, 2018, setting the hearing for April 18, 2018. Department Counsel offered Government Exhibits (GE) 1 through 3 into evidence. All exhibits were admitted without objection. Applicant testified but did not offer any exhibits into evidence. DOHA received the hearing transcript (Tr.) on April 26, 2018. The record remained open until May 21, 2018, to give Applicant an opportunity to provide documents. He timely submitted a document that is marked as Applicant Exhibit (AE) A. Department Counsel did not object to the document, and it is admitted.

Findings of Fact

Applicant is 26 years old and unmarried. He graduated from high school in June 2010 and enlisted in the Navy in 2010. He was an E-5 when he was honorably discharged in October 2014. He held a security clearance while serving. After being discharged, Applicant was unemployed until January 2016 when he started a position with a defense contractor. In March 2016, he submitted a security clearance application (SCA). In it, he disclosed that he had used marijuana. (Tr. 14-16; GE 3)

Applicant started using marijuana in October 2006, while in high school. He used it about once a week with friends on weekends until March 2010. Late in his senior year, he was disciplined for smoking marijuana. (Tr. 19; GE 3; Answer) He did not use marijuana while serving in the military between 2010 and 2014, and did not use it while possessing a security clearance. (Tr. 31-34)

While unemployed after leaving the Navy in October 2014, Applicant resumed smoking marijuana until January 2016, when he obtained his current position. He used it once or twice a week with his roommate or other friends during that period of unemployment. After leaving the regimented life of military service, he chose to smoke marijuana again in order to experience a freer lifestyle. He noted that marijuana is legal in his state, but it is no longer part of his lifestyle. (Tr. 24-28)

Applicant stated in his 2016 SCA he may use marijuana in the future if he were unemployed again because it is legal in his state. (Tr. 27) In response to a question about his intent to use marijuana in the future, he testified that he will not use it because "it's really of no interest to me." (Tr. 28, 30) He understood the security concerns related to its usage and his employer's policy prohibiting its use. He participated in a random drug screening before he started his position. The results were negative. He knows he is subject to random screenings at work. (Tr. 20-22, 28-29)

Applicant has changed his life. He has a new group of friends who are focused on their lives and employment. Occasionally, he sees at sports events some people with whom he used marijuana. Although they sometimes smoke it in his presence, they are

aware that he no longer uses it. (Tr. 35-36) He has not participated in substance abuse treatment, but stopped using it through his determination. (Tr. 34-35)

Applicant submitted a letter from his supervisor. He stated that Applicant is an excellent employee and complimented him regarding his reliability. (AE A)

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. 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 *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 concern involving drug involvement and substance misuse as follows:

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 a security concern. Two may be disqualifying in this case:

- (a) any substance misuse (see above definition); and
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant admitted that he illegally used marijuana from October 2006 to March 2010 while a minor in high school. He used marijuana from October 2014 to January 2016 while unemployed in his home state where it is not against state law. However, that usage was in violation of federal law. He also expressed an intent to use it again if he became unemployed. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate drug involvement and substance misuse security concerns are provided in AG ¶ 26. The following are potentially 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.

The last time Applicant used marijuana was in January 2016, prior to starting employment and after passing a drug screening. He is aware of his employer's anti-drug policy. That previous usage, along with his illegal high school usage, do not cast doubt on his current trustworthiness. His early drug abuse occurred when he was immature and underage. His subsequent usage after leaving the Navy was not against state law. The evidence establishes some mitigation under AG ¶ 26(a).

Since starting employment with a defense contractor, Applicant has not used marijuana. He infrequently associates with some friends who use marijuana; however, they are aware that he no longer uses it. He emphasized that he has no intention to use marijuana while holding a security clearance or working for a federal contractor. He understands any use would be a violation of federal law, but not necessarily state law, depending on where he lives. The evidence established mitigation under AG ¶¶ 26(b)(1), (2), and (3).

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.

According to 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 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. I have incorporated my comments under Guideline H in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

After observing Applicant's demeanor and listening to his testimony, I found him to be candid and honest. He disclosed his prior marijuana use in his 2016 SCA. He understands the ramifications that smoking marijuana has had and could have in future employment, regardless of its legality in his home state. Given those facts, a complimentary letter from his employer, and the fact that he voluntarily stopped using marijuana while in the Navy and when he obtained a defense contractor position, I do not believe that he will engage in similar conduct in the future. Overall, the evidence no longer raises doubt as to Applicant's present eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to continue Applicant's access to classified information. National security eligibility is granted.

SHARI DAM
Administrative Judge