



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



In the matter of:

Applicant for Security Clearance

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) ISCR Case No: 17-01589
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Appearances

For Government: Carroll J. Connelley, Esquire, Department Counsel

For Applicant: *Pro se*

05/08/2018

Decision

Dam, Shari, Administrative Judge:

Applicant failed to mitigate the security concerns raised under the guideline for drug involvement and substance misuse, relating to his illegal use of a prescription drug and marijuana. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

Statement of Case

On July 19, 2017, 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 Misuse). Applicant responded to the SOR on August 17, 2017, and requested his case be decided by an administrative judge on the written record without a hearing.

On September 13, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing five Items, was mailed to Applicant on that day, and received by him on September 21, 2017. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not respond to the FORM or object to Items 1 through 5. Hence, all Items are admitted

into evidence. On December 18, 2017, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me.

Findings of Fact

Applicant admitted the four SOR allegations contained in Paragraph 1. (Item 2) His admissions are incorporated into these findings of fact.

Applicant is 28 years old, a high school graduate, and unmarried. He has worked for a defense contractor since November 2009 and held a security clearance during this time. (Item 1)

On September 9, 2015, Applicant submitted a security clearance application (SF-86). In it he disclosed the following information: that from February 2011 to May 2015 he illegally used and purchased the prescription medication oxycodone, a narcotic, which was initially prescribed to him for pain management; and that he illegally used the drug while holding a security clearance. (GE 2)

In spring 2015, Applicant began participating in a nine-month outpatient medical program for his opioid addiction and was diagnosed with opioid type dependence, episodic. (GE 3) He admitted that in June 2015, while participating in treatment and holding a security clearance, he illegally used marijuana to manage his withdrawal symptoms from opioids. In July 2015, he was stopped by the police, who confiscated oxycodone from him that he had illegally purchased to use. (GE 1, GE 3)

During a February 2017 investigative interview, Applicant stated that he no longer associates with friends who use drugs. He said he has not used any illegal drug since June 2015. He stated that he illegally purchased and used oxycodone on a weekly basis for several years. He does not intend to use illegal drugs or marijuana in the future. (GE 3) No other information regarding Applicant's treatment, diagnosis, or prognosis was provided.

Policies

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), which became effective within the DOD on June 8, 2017.

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 eligibility for access to classified information.

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. Four are potentially applicable:

- (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;
- (d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of substance use disorder; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant illegally purchased and used prescription medication weekly from 2011 into 2015, and also used marijuana in 2015. He used the illegal substances while holding a security clearance. In June 2015, he was diagnosed with opioid dependence. The evidence raised the above disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

AG ¶ 26 lists conditions that could mitigate security concerns raised under this guideline. Three may apply:

- (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; 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's illegal drug use occurred weekly for four years from 2011 into 2015. He used marijuana while in treatment for opioid addiction. His past drug use occurred with sufficient frequency to raise ongoing concerns about Applicant's current trustworthiness and judgment. The evidence does not establish mitigation under AG ¶ 26(a).

Applicant disclosed and acknowledged his history of illegal drug and marijuana use. He stated that he has not used illegal substances since mid-2015, approximately three years ago. He said he did not intend to use illegal substances in the future and no longer associates with people who use illegal drugs. There is evidence to establish some mitigation under AG ¶ 26(b)(1).

Applicant stated that he participated in and completed a substance abuse treatment program in 2015. However, he did not submit evidence detailing his participation, completion of the program, along with a discharge summary, or compliance with any recommended aftercare program. Although he received a diagnosis of opioid dependence while in treatment, there is no evidence that he received a favorable prognosis by a duly qualified medical professional, subsequent to that treatment. There is insufficient evidence to establish mitigation under AG ¶ 26(d).

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 honestly and voluntarily disclosed to the Government his significant history of abusing prescription drugs and marijuana. While there is some evidence that he is committed to not engaging in similar conduct in the future, it is insufficient to conclude that he has successfully overcome his three or four year drug addiction. Applicant's repeated illegal use of a prescription drug and use of marijuana while holding a security clearance is a serious security concern. Overall, the record evidence leaves me with doubt as to Applicant's eligibility for a security clearance. He did not meet his burden to mitigate the security concerns arising under the guideline for drug involvement and substance misuse.

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:

AGAINST APPLICANT

Subparagraphs 1.a through 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 access to classified information. National security eligibility is denied.

SHARI DAM
Administrative Judge