



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 17-02120

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

10/01/2018

Decision

Curry, Marc E., Administrative Judge:

Given the amount of time that has elapsed since Applicant's last arrest, the amount of time that has passed since his last use of marijuana, and his exceptional career growth over the past few years, I conclude that Applicant has mitigated the security concerns. Clearance is granted.

Statement of the Case

On July 14, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guidelines H, drug involvement, and J, criminal conduct, explaining why it was unable to find it clearly consistent with the national interest to grant security clearance eligibility. The DOD CAF took the action 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 Security Executive Agent Directive 4, effective June 8, 2017.

On August 8, 2017, Applicant answered the SOR, admitting the allegations and requesting a hearing, whereupon the case was assigned to me on March 15, 2018. On June 19, 2018, the Defense Office of Hearings and Appeals issued a notice of hearing, scheduling Applicant's case for July 31, 2018. The hearing was held as scheduled. I received three Government exhibits (GE 1 through GE 3), one exhibit from Applicant (AE A) The transcript (Tr.) was received on August 8, 2018.

Preliminary Ruling

Driving with an expired license is not a criminal offense in the state where Applicant received the citation, as alleged in subparagraph 1.c. Therefore, it generates no Guideline J security concern. I resolve subparagraph 1.c in Applicant's favor.

Findings of Fact

Applicant is a 27-year-old single man. He has earned some college credits. For the past four years, he has worked for a defense contractor as an engineer.

Applicant was a standout high school student, graduating with a 4.65 grade-point average, earning letters in two sports, where he served as captain for both teams, and performing in one of his school's music ensembles. Applicant's exceptional high school accomplishments earned him a full scholarship to attend college.

Applicant's fortunes began to change when his parents separated during his freshman year of college. In the course of their separation, they missed a deadline to complete some paperwork required for Applicant to continue receiving his scholarship. (AE A at 1) Having lost the scholarship, Applicant could not afford the tuition, and ultimately dropped out of school. Applicant then relocated, moving in with his father. (Answer at 1)

Emotionally devastated by his parents' divorce and the loss of his scholarship, Applicant "fell into the wrong crowd," and began using marijuana. (AE A at 1) He had experimented with it during college, but after dropping out, his use became heavier. At its peak between May 2010 and May 2011, Applicant was smoking marijuana five days per week. (GE 2 at 4) His use decreased between 2011 and 2015, as he limited it to controlling anxiety that he developed after his parents' divorce. (Tr. 26)

Applicant's marijuana use led to two drug-related arrests. Specifically, in March 2014, he was arrested and charged with possession of marijuana. Subsequently, he was fined \$161 and ordered to attend an eight-week drug-education course, attend counseling, and perform 25-hours community service. (GE 2 at 4; GE 3 at 2) After Applicant satisfactorily complied with the court order, the state dropped the charges.

In November 2015, Applicant was arrested and charged with felony possession of marijuana after a police officer, during a routine automobile stop, discovered more than three ounces of marijuana in Applicant's car. (GE 2 at 3) In April 2016, Applicant pleaded guilty to a lesser misdemeanor charge, whereupon the court sentenced him to 360 days in

jail with 340 days suspended, revoked his driving privileges for six months, and fined him \$250. (GE 2 at 3)

Applicant has not smoked marijuana in nearly three years. (Tr. 21) No one in his family or in his inner circle of friends smokes marijuana. (Tr. 24) He no longer stays in touch with his friends with whom he smoked marijuana in college. He uses his hobbies, refurbishing vans and competitive power lifting, to manage his anxiety. (Tr. 26)

Applicant has thrived on his job. He began as a trainee. Now, he supervises two people. He has received five salary increases over the years. Per Applicant's supervisor, his job is extremely demanding and dangerous, as it involves working with highly reactive, volatile materials. (Tr. 45) Applicant performs his work "flawlessly," as he is "an extremely careful, very, very, dedicated individual who almost has this innate sense of being able to track the various parameters and variables that are entailed in this process." (Tr. 39, 45) Applicant's company "lucked out" by getting him into this position. (Tr. 40)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 the adjudicative process. The administrative judge's overall 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).¹

Analysis

Guideline J: Criminal Conduct

Under this guideline, “criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness.” Moreover, “by its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” (AG ¶ 30) Applicant’s illegal drug use and two drug-related arrests trigger the application of AG ¶ 31(a), “a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual’s judgment, reliability, or trustworthiness,” and AG ¶ 31(b), “evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted,” apply.

Applicant complied with the terms of the court order related to his 2015 arrest. In the three years since this arrest, he has excelled on the job, and abstained from illegal drug use. He no longer associates with his friends with whom he used illegal drugs in college. AG ¶ 32(a), “so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubts on the individual’s reliability, trustworthiness, or good judgment,” and AG ¶ 32(d), “there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation . . . good employment record, or constructive community involvement,” apply. Applicant has mitigated the criminal conduct security concern.

Guideline H: Drug Involvement and Substance Misuse

The security concerns about drug involvement are set forth in AG ¶ 24:

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

¹ The factors under AG ¶ 2(a) are as follows:

(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.

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.

When Applicant began his freshman year in college, he was a highly-touted prospect, whose high-school achievements had earned him a full, four-year scholarship. By the end of his freshman year, he had lost his scholarship and was forced to withdraw from school, not for poor performance, but because his parents, embroiled in a divorce, failed to complete the requisite paperwork for him to keep his scholarship. These surrounding circumstances were emotionally devastating and contributed to the significant increase in his marijuana use over the following year.

Applicant has not used marijuana in more than three years. He no longer associates with his friends who smoke marijuana, and he has excelled at his job. His life has stabilized and he has learned to control his anxiety, a lingering byproduct of his traumatic freshman year in college, through engaging in hobbies, rather than smoking marijuana. The mitigating conditions under AG ¶ 26 apply, as follows:

(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;
[and]

(2) changing or avoiding the environment where drugs were
used . . .

I conclude Applicant has mitigated the drug involvement security concern.

Whole-Person Concept

I considered the factors under the whole-person concept when I analyzed the disqualifying and mitigating conditions under the criminal conduct and drug involvement guidelines.

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 J:	FOR APPLICANT
Subparagraphs 1.a – 1.c:	For Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraphs 2.a – 2.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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Marc E. Curry
Administrative Judge