



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



In the matter of:)
)
) ISCR Case: 17-03399
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: *Pro se*

September 6, 2018

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On July 21, 2016, Applicant submitted a security clearance application (e-QIP). On February 8, 2018, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline H, Drug Involvement and Substance Misuse. 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*, effective within the DoD on June 8, 2017.

Applicant answered the SOR on March 20, 2018, and requested a hearing before an administrative judge. The case was assigned to me on May 2, 2018. The Defense Office of Hearings and Appeals issued a notice of hearing on June 21, 2018, and the hearing was convened as scheduled on August 6, 2018. The Government offered two exhibits, referred to as Government Exhibits 1 and 2, which were admitted without

objection. Applicant offered no documentary exhibits at the hearing. The record remained open to allow Applicant the opportunity to submit additional supporting documentation. Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A, which was admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on August 15, 2018.

Findings of Fact

Applicant is 23 years old. He is unmarried with no children. He has a bachelor's degree in aerospace engineering. He is employed by a defense contractor as a Systems Test Engineer. He is seeking to obtain a security clearance in connection with his employment.

Applicant used marijuana on multiple occasions between August 2014 and June 2017. He was born in a small city that he describes as pretty ridden with drugs. As a high school student he never consumed alcohol or used illegal drugs, but was focused on school and sports. Applicant was a straight-A student and was admitted to an elite-engineering University. Once there, Applicant states that marijuana was a social thing, and he began using marijuana in 2014 as a sophomore in college. He explained that college was a high stress environment, and a lot of his friends had been using it on the weekends to relax. He used it, as a good release, about once a week at parties or with a group of friends at his fraternity house. He states that his use of marijuana did not affect his school productivity, as he graduated with a 3.5 GPA. (Applicant's Post-Hearing Exhibit A.) He understood that it was not legal for him to use marijuana in the state in which he resided at that time, (Massachusetts) and he knew that it was against Federal law.

During the summers of 2015 and 2016, Applicant was hired as an intern for a defense contractor. He applied for a security clearance in July 2016. Applicant states that he did not use marijuana while working for the defense contractor. However, he explained that he never failed a mandatory drug test conducted by his employer during his internship because he had no problem quitting his marijuana use, usually three months in advance, before he knew he had to take a drug test. (Tr. p. 31.) It was only when he went back to school that he used it. In total, Applicant believes he used marijuana about 100 to 120 times. (Tr. p. 24.) His friends either gave it to him or he purchased it. Applicant graduated from college in June 2017, and at that time he began working full time for his current employer. He states that his marijuana use never had any negative impact on his work performance, finances, school work or personality. He states that he has not used marijuana since June 2017, and that he has no future intent to use marijuana. (Tr. p. 27.)

Applicant states that marijuana is no longer a part of his lifestyle. He is very involved with outdoor activities. He is now a rock climber, a cyclist and he enjoys

surfing. Applicant candidly disclosed his use of marijuana on his security clearance application understanding that there could be negative repercussions.

A letter of reference from Applicant's direct manager, who has worked with and known the Applicant since June 2017, indicates that he considers Applicant to be a valuable and high contributing member of the company. Applicant's attendance and punctuality has been outstanding, and he completes all tasks on time with minimal assistance. He demonstrates leadership abilities in guiding and teaching the college interns. He is recommended for a security clearance. (Applicant's Post-hearing Exhibit A.)

Policies

When evaluating an applicant's suitability for 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. 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 also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline H: Drug Involvement and Substance Misuse

The security concern relating to the guideline Drug Involvement and Substance Misuse is set forth at 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 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.

The guideline at AG ¶ 25 contains three conditions that could raise a security concern and may be disqualifying.

- (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, and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns. None of the conditions are 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.

It is noted that Applicant has made some changes in his lifestyle since graduating from college and joining the defense industry as a full-time employee. His history of marijuana use from August 2014 through June 2017, however, continues to be against Federal law and DoD policy. Applicant was working for a defense contractor during the summers of 2015 and 2016 and knew that his company policy prohibited the use of illegal drugs. To avoid failing his mandatory drug tests administered by his employer, he strategically quit using marijuana about three months before he knew he would be subject to a drug test, and then returned to using it when he went back to college. This history of illegal drug use shows his immaturity, poor judgment and unreliability. Applicant now states that he no longer intends to use marijuana, and there is no other evidence of marijuana use in the record since June 2017. However, given his history and pattern of marijuana use over recent years, it cannot be determined that he will stop cold turkey or that he will use good judgment. The likelihood that he will continue to use marijuana in the future is great. At this time, it cannot be found that he is sufficiently responsible to access sensitive or classified information.

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. It is noted that Applicant revealed his illegal drug use on his security clearance application dated July 21, 2016, which is what he is expected to do. Nevertheless, Applicant is a 23-year old adult, who is still young and immature. From 2014 to 2017, he used marijuana, which he knew to be illegal. He also used marijuana after having been granted an interim security clearance by the Department of Defense, and continued to use marijuana until June 2017. Applicant has not demonstrated sufficient responsibility on any level to be eligible for access to classified information. Overall the record evidence leaves me with serious doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He has not met his burden to mitigate the security concerns arising under the guidelines for Drug Involvement.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:

AGAINST APPLICANT

Subparagraphs 1.a

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 national security eligibility for a security clearance. National security eligibility is denied.

Darlene Lokey Anderson
Administrative Judge