



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



In the matter of:

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) ISCR Case No. 17-04196
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Applicant for Security Clearance

Appearances

For Government: Tara Karoian, Esquire, Department Counsel

For Applicant: *Pro se*

June 15, 2018

Decision

CEFOLA, Richard A., Administrative Judge:

On March 31, 2017, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On January 9, 2018, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective June 8, 2017.

Applicant answered the SOR in writing on January 26, 2018, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) received the request on or about February 2, 2018. I received the case assignment on February 27, 2018. DOHA issued a Notice of Hearing on February 28, 2018, and I convened the hearing as scheduled on April 26, 2018. The Government offered Exhibits (GXs) 1 and 2, which were received without objection. Applicant testified and submitted Exhibits (AppXs) A and B, without objection. Applicant also

asked that the record be kept open until May 25, 2018, for the receipt of additional documentation. On May 17, 2018, he submitted AppX C, which was also received without objection. DOHA received the transcript of the hearing (TR) on May 4, 2018. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR Applicant admitted all the factual allegations in Paragraph 1 of the SOR, with explanations. Applicant is 26-years old. (GX 1 at page 5.) He has a degree in mechanical engineering, and has worked for a defense contractor since June of 2014. (GX 1 at page 14.)

Guideline H – Drug Involvement and Substance Misuse

1.a. and 1.b. Applicant used marijuana about 30 times from 2009, until his last usage in March of 2017, about a year prior to his hearing. (TR at page 15 line 12 to page 21 line 12.) During this period of usage, Applicant used the illegal substance about five times after being employed by a defense contractor. (*Id.*) He also purchased marijuana once, prior to his current employment. (TR at page 18 lines 10~19.)

1.c. and 1.d. Applicant used both Adderall and Vyvanse, without valid medical prescriptions, 15~20 times from about 2010 to November of 2016. (TR at page 21 line 15 to page 24 line 16.)

1.e. and 1.f. Applicant used cocaine twice in 2012 when he attended college, and 15~20 times while employed by a defense contractor from 2016 until about January of 2017. (TR at page 25 line 11 to page 31 line 21, and at page 34 line 20 to page 35 line 7.) His recent usage was to self-medicate himself for pain. (TR at page 27 line 21 to page 28 line 22.) Applicant also purchased cocaine once in celebration of his 25th birthday. (TR at page 29 lines 2~7.)

1.g. Applicant used Norco, without a valid prescription, in July of 2016. (TR at page 24 line 17 to page 25 line 10.)

In a written statement dated April 16, 2018, Applicant avers he “will abstain from all drug involvement and substance misuse.” (AppX B.)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, administrative judges apply the guidelines 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. According to AG ¶ 2(a), 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must 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 who seeks access to classified information enters 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 access to classified information. 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 information.

Section 7 of Executive Order 10865 provides that decisions shall be "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 concerning 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 seven conditions that could raise a security concern and may be disqualifying. Two conditions are established:

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Appellant misused prescription drugs, and used both marijuana and cocaine after being employed by a defense contractor. Therefore, AG ¶ 25 (a) and (c) are established.

The guideline at AG ¶ 26 contains four conditions that could mitigate security concerns. None of them are applicable. In light of his fairly extensive and recent usage, Applicant's eschewing the future use of illegal substances is not convincing. This allegation is found against Applicant.

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 an applicant's conduct and all the 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has submitted for my consideration a recent performance review. (AppX C.)

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For this reason, I conclude Applicant has not mitigated the security concerns arising from his drug involvement and substance abuse.

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.~1.g.: 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. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge