



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



In the matter of:)
)
) ADP Case No. 18-00102
)
Applicant for a Public Trust Position)

Appearances

For Government: Brittany Muetzel, Esq., Department Counsel
For Applicant: *Pro se*

10/01/2018

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for a public trust position to work in the defense industry. Applicant failed to mitigate concerns raised by his history of marijuana use, purchase, and continued use after being granted public trust eligibility in June 2011. He also failed to mitigate personal conduct concerns raised by his drug involvement and the falsification of two personnel security questionnaires. His request for eligibility to occupy a position of trust is denied.

Statement of the Case

On February 16, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing trustworthiness concerns under the drug involvement and substance misuse and personal conduct guidelines.¹ DOD adjudicators were unable to find that it is clearly consistent with the interests of national security to grant Applicant's

¹ The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Review Program* (Jan. 2, 1992), as amended (Directive); and the National Security Adjudicative Guidelines (AG), effective June 8, 2017.

access to sensitive information and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's eligibility to occupy a public trust position.

Applicant answered the SOR and requested a decision without a hearing.² The Government submitted its written case on April 27, 2018. A complete copy of the file of relevant material (FORM) and the Directive were provided to Applicant. He received the FORM on May 18, 2018, and did not respond. The items appended to the FORM are admitted as Government's Exhibits (GE) 1 through 6, without objection.

Findings of Fact

Applicant, 32, has worked for his current employer, a federal contractor, since November 2012. Applicant graduated from college in 2010 and has spent the last eight years working on federal contracts. He completed a Questionnaire for Public Trust Position in December 2010 and was adjudicated favorably in June 2011. He completed an Electronic Questionnaire for Investigations Processing (e-QIP) in August 2016. He did not list any derogatory information on either application. During his first subject interview in March 2017, Applicant admitted to drug involvement. The SOR alleges that Applicant used marijuana from 2004 to approximately January 2017, and after being granted public trust eligibility (SOR ¶ 1.a); that he purchased the drug on multiple occasions between 2009 and January 2017 (SOR ¶ 1.b); and, that he intends to use marijuana in the future (SOR ¶ 1.c). The SOR also alleges Applicant's drug use under the personal conduct guideline (SOR ¶ 2.a) in addition to the falsification of Section 21: Illegal Drugs³ on his December 2010 public trust questionnaire (SOR ¶¶ 2.d) and Section 23: Illegal use of Drugs or Drug Activity⁴ on his August 2016 e-QIP (SOR ¶¶ b – c).⁵

Applicant admits his history of marijuana use, purchase, and continued use after being granted a public trust position. He admits purchasing and using marijuana with a

² GE 1.

³ **Section 21: Illegal Drugs:** (a) In the last year, have you illegal used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.) amphetamines, depressants (barbiturates, methaqualone, tranquilizers etc.), hallucinogenics (LSD, PCP, etc.) or prescription drugs? (b) In the last 7, years, have you been involved in the illegal purchase, manufacture, trafficking, production, transfer, shipping, receiving, or sale of any narcotic, depressant, stimulant, hallucinogenics, or cannabis, for your own intended profit or that of another?

⁴ **Section 23: Illegal Use of Drugs or Controlled Substance:** In the last seven (7) years, have you illegally used any drugs or controlled substances? Use of a drug or controlled substance includes injecting, snorting, inhaling, swallowing, experiment with or otherwise consuming any drug or controlled substance? **Illegal Drug Activity:** In the last seven (7) years, have you been involved in the illegal purchase, manufacture, cultivation, trafficking production, transfer, shipping, receiving, handling or sale of any drug or controlled substance?

⁵ GE 1-6.

friend with whom he maintains ongoing contact.⁶ However, he denies the falsification allegations claiming:

It was a long form and I did not read the question thoroughly enough. It is a complicated worded question that doesn't even mention marijuana. I had to read through it several times to actually figure out if I should even admit guilt. When I see the word, controlled substance, I think of something like heroine. Now I understand it says illegal drug; that is myself being tired and my personal views on marijuana being different than a controlled substance. I also know that this is inconsistent with the law. I admitted to using the substance as much to the investigator and have been consistent with my statement after the fact.⁷

I filled in the form incorrectly, and readily corrected my mistake when asked for clarification from the investigator. I have fully complied and been truthful with all of my answers to the best of my ability.⁸

Applicant continued to use marijuana after his March 2017 interview. In his response to DOHA interrogatories, dated February 6, 2018, Applicant admitted that he used marijuana in the two weeks before in January 2018. He admits in his answer to the SOR that he will continue to use marijuana in the future.⁹

Policies

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. 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 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.

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 trustworthiness decision.

⁶ GE 6.

⁷ GE 2.

⁸ GE 2.

⁹ GE 2, 5.

A person who seeks access to sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Analysis

Drug Involvement and Substance Misuse

Applicant admits using marijuana from 2004 to January 2017, including after being granted public trust eligibility in June 2011, and purchasing the drug between 2009 and 2017.¹⁰ The illegal use of controlled substances can raise questions about an individual's reliability and trustworthiness, 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.¹¹ Applicant's 14-year history of drug involvement is disqualifying on its own and is exacerbated by his continued use of marijuana after being granted public trust eligibility and during the current adjudication of his ongoing eligibility. Applicant acknowledges that his views are inconsistent with federal law and that he will continue to smoke marijuana in the future.¹² Given the ongoing nature of Applicant's illegal drug involvement, none of the relevant mitigating conditions apply.

Personal Conduct

Conduct involving questionable judgment or unwillingness to comply with rules and regulations can raise questions about an individual's ongoing reliability, trustworthiness, and ability to protect sensitive information.¹³ Here, Applicant's ongoing marijuana use creates vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group.¹⁴

An applicant's lack of candor or dishonesty also raises questions about his public trust eligibility. Of special interest in any adjudication, and this case in particular, is an applicant's failure to provide truthful and candid answers during the security clearance

¹⁰ AG ¶¶ 25 (a), (c), (f).

¹¹ See, AG ¶ 24.

¹² AG ¶ 25(g).

¹³ AG ¶15.

¹⁴ AG ¶ 16(e).

process.¹⁵ The SOR alleges that Applicant intentionally failed to disclose his history of marijuana use and purchase on a December 2010 public trust questionnaire and an August 2016 e-QIP. The record supports a finding that Applicant intentionally falsified both questionnaires.¹⁶

A statement is false when it is made deliberately (knowingly and willfully). However, an omission of relevant and material information is not deliberate if the person genuinely misunderstood the question. Applicant's explanation that he not understand the term 'controlled substance' is not credible. Section 23 on the August 2016 e-QIP clearly asks about illegal drug use and purchase. Applicant knows the marijuana is an illegal drug. Section 21 on the public trust questionnaire is more direct, specifically listing marijuana as an illegal controlled substance. However, the language of both questionnaires is clear. A reasonable person with Applicant's history of drug involvement, reading the same questions, would have understood that his history of drug use should have been disclosed.

Applicant's falsifications are not mitigated because he volunteered his drug involvement during his background interview. An applicant is expected to provide full, frank, and candid disclosures to the Government at all times. Anything less provides a rational basis for a finding against an applicant's security worthiness. On the December 2010 questionnaire, Applicant withheld material information that prevented the Government from properly vetting his public trust eligibility. It is unlikely that Applicant would have been adjudicated favorably if he admitted contemporaneous drug use.

Whole-person Concept

Based on the record, I have significant reservations about Applicant's current security worthiness. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). The purpose of the security clearance adjudication is to make "an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk."¹⁷ During the current adjudication, Applicant revealed conduct that supports a negative whole-person assessment of his judgment, reliability, and trustworthiness. His behavior also casts doubt on his ability to follow rules and regulations and demonstrates a disregard for his fiduciary relationship with the government.

¹⁵ AG ¶ 15.

¹⁶ AG ¶16(b).

¹⁷ AG ¶ 2(d).

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, Drug Involvement and
Substance Misuse:

AGAINST APPLICANT

Subparagraphs 1.a-1.c:

Against Applicant

Paragraph 2, Personal Conduct:

AGAINST APPLICANT

Subparagraphs 2.a – 2.d:

Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant Applicant public trust eligibility. Applicant's eligibility to occupy a position of trust is denied.

Nichole L. Noel
Administrative Judge