



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



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 14-03346
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Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

01/08/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant used illegal drugs for about 20 years, most recently in January 2013. Given the scope of his drug use, his current period of abstinence is insufficient to mitigate the associated security concerns. His request for a security clearance is denied.

Statement of the Case

On May 8, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain a security clearance required for his job with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Department of Defense (DOD) could not determine that it is clearly consistent with the national interest for Applicant to have access to classified information.¹

¹ Required by Executive Order 10865, as amended. See also Directive, Section E3.1.1.

On July 29, 2014, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed at Guideline H (Drug Involvement).² Applicant timely responded to the SOR and requested a decision without a hearing. On October 9, 2014, Department Counsel issued a File of Relevant Material (FORM)³ in support of the SOR. Applicant received the FORM on November 6, 2014, and was notified that he had 30 days to file a response to the FORM. He timely submitted additional information, which has been included in the record without objection. The record closed on December 6, 2014, and the case was assigned to me on January 5, 2015.

Findings of Fact

The Government alleged that Applicant used marijuana at least twice monthly between April 1993 and January 2013 (SOR 1.a); that he used hallucinogenic mushrooms between five and ten times between April 1993 and September 2008 (SOR 1.b); that he purchased marijuana on various occasions between April 1993 and May 2012 (SOR 1.c); and that he purchased hallucinogenic mushrooms on various occasions between April 1993 and January 2008 (SOR 1.d). Applicant admitted each allegation. In addition to the facts established by Applicant's admission, I make the following findings of fact.

Applicant is 38 years old and works as a security engineer for a defense contractor. He has a bachelor's degree in information systems and a master's degree in business administration. Applicant was hired for his current position in March 2013. From 2001 until 2013, he worked in information systems positions at a credit union and a health services company. Both of those jobs involved access to sensitive information or other fiduciary responsibility. This is Applicant's first request for a security clearance. (FORM, Item 2)

In his eQIP, Applicant disclosed the information alleged in the SOR. He started using illegal drugs at age 17. He avers he stopped using drugs because he has grown up. He also cites his happiness with his current job and its valuable support of U.S. military efforts as reasons for ending his illegal drug involvement. In response to the SOR, Applicant stated that he only purchased small amounts of drugs for personal use. He further stated that he has no excuse for his drug use, but explained that he has experienced personal tragedy and difficulties since about 1993. His parents separated that year and his father died a year later. After his mother lost a seven-year battle with cancer in 2003, Applicant became the legal guardian for his grandmother, who suffered from dementia. He eventually had her involuntarily placed in a nursing facility before she passed away in 2007. (FORM, Item 2)

² See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

³ See Directive, Enclosure 3, Section E3.1.7. The FORM included four documents (Items 1 - 4) proffered in support of the Government's case.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁴ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

(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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOHA based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.⁶ If the Department Counsel meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁷

Because no one is entitled to a security clearance, an applicant bears a heavy burden of persuasion to establish that it is clearly consistent with the national interest for the applicant to have access to protected information.⁸ A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's interests as his or her own. The “clearly consistent with the national interest”

⁴ Directive, 6.3.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ Directive, E3.1.14.

⁷ Directive, E3.1.15.

⁸ See *Egan*, 484 U.S. at 528, 531.

standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.⁹

Analysis

Drug Involvement

Applicant is 38 years old, and he has used marijuana, at times as often as twice monthly, for at least 20 years. He also used hallucinogenic mushrooms until he was 32 years old. At times between 1993 and 2012, he purchased small amounts of illegal drugs for personal use. This information raises a security concern articulated at AG ¶ 24, as follows:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

More specifically, available information requires application of the disqualifying conditions at AG ¶¶ 25(a) (*any drug abuse (see above definition)*); and 25(c) (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*).

In response to the Government's information, the following AG ¶ 26 mitigating conditions are available:

(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) a demonstrated intent not to abuse any drugs in the future, such as: (1) dissociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate

⁹ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; 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 has not used illegal drugs in almost two years. However, his involvement with illegal drugs spanned his entire adult life. Accordingly, this period of abstinence is not sufficient to support a conclusion that he will not engage in such conduct again. Applicant did not otherwise provide information that supports application of any of the AG ¶ 26 mitigating conditions. He has failed to mitigate the security concerns about his involvement with illegal drugs.

Whole-Person Concept

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guideline H. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Despite significant personal adversities, Applicant has been professionally and academically productive. However, he has also demonstrated that he is willing to disregard the law by purchasing and using controlled substances throughout most of his life. His abstinence from drug use since early 2013 does not yet show that his conduct will not recur, and that he is willing to abide by laws and policies in this regard. As a result, doubts remain about his suitability for access to classified information. Because protection of the national interest is the central purpose of these adjudications, those doubts must be resolved for the Government.

Formal Findings

Formal findings 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 - 1.d:	Against Applicant

Conclusion

In light of all available information, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge