



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



In the matter of:)	
)	
)	ISCR Case No. 14-03854
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

08/13/2015

Decision

DAM, Shari, Administrative Judge:

Applicant has a 12-year history of drug abuse, which he began in 2000. He failed to provide sufficient evidence to mitigate the security concerns raised by this conduct. Eligibility for access to classified information is denied.

Statement of the Case

In February 2014 Applicant submitted a security clearance application (Item 3). On November 6, 2014, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline H, (Drug Involvement). 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 (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On December 9, 2014, Applicant answered the SOR, and elected to have the case decided on the written record in lieu of a hearing. On April 20, 2015, Department Counsel prepared a File of Relevant Material (FORM) containing four Items, and mailed Applicant a complete copy the same day. Applicant received the FORM on May 19, 2015, and had 30 days from its receipt to file objections and submit additional information. He timely submitted additional documents, which I marked as Applicant Exhibit (AE) A, and entered into the record without an objection from Department Counsel. On July 14, 2015, DOHA assigned the case to me.

Findings of Fact

Applicant admitted all three allegations contained in the SOR. His admissions are accepted as factual findings.

Applicant is 31 years old and unmarried. He earned a bachelor's degree in 2009. He began working for his current employer in December 2012. (Item 3.)

Applicant admitted that he has a history of illegally using marijuana beginning in May 2000, when he was 14 years old. He continued using it until July 2012, when he was 26 years old and out of college. He used it approximately 50 times. He admitted that he used illegal cocaine approximately five times, between April 2008 and July 2012. He illegally used ecstasy on at least one occasion in July 2011, when he was 25 years old. (Item 2.)

Applicant stated that he used marijuana to relieve stress due to "hardships relating to personal relationships and employment." (Item 2; AE A at 1.) He said that individuals close to him died; he broke up with his girlfriend; his father was incarcerated; and his good friend became addicted to substances. He tried and used cocaine and ecstasy out of his curiosity and desire for experimentation. (Item 2.) He takes full responsibility for his illegal use and did not offer any excuses for his misconduct. He said the last time he used an illegal substance was three years ago. (AE A at 1, 2.)

Applicant said that he no longer associates with people who use illegal substances. (Item 2.) He submitted copies of his resume; a letter of admission to graduate school; a copy of his college transcript; and letters of recommendation. Two coworkers recommended him to the graduate school program. (AE A at 10, 11.) He also submitted a 2014 performance review on which he received a "consistently exceeds expectations" rating. (AE A at 12.)

Policies

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 to be used 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 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) and 2(c), 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 access to classified information 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, "[t]he 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." Section 7 of Executive Order 10865 provides: "[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."

A person applying for access to classified information 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 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.

Analysis

Guideline H, Drug Involvement

AG ¶ 24 expresses the security concerns pertaining to drug involvement:

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.

AG ¶ 25 describes a condition that could raise a security concern and may be disqualifying:

(a) any drug abuse (see above definition).

Applicant has a 12-year history of using illegal drugs that began in 2000 while he was attending junior high school. The evidence raises disqualifying security concerns under AG ¶ 25(a), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

AG ¶ 26 provides three conditions that could mitigate security concerns raised in this case:

(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) disassociation from drug-using associates and contacts;

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

(3) an appropriate period of abstinence;

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

Due to the length and frequency of Applicant's history of illegal drug use, and the relatively short period of abstinence (three years) in comparison, AG ¶ 26(a) does not provide evidence of mitigation. Applicant provided some evidence of his disassociation from drug-using associates. Thus, AG ¶ 26(b)(1) has limited application. There is no evidence to establish mitigation through a drug treatment program under AG ¶ 26(d).

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(a):

(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 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. Applicant is a 31-year-old man, who has successfully worked for a defense contractor since December 2012. He stated that he has not used illegal drugs since July 2012, but provided insufficient credible evidence to corroborate that assertion or to assure the Government that he will not to use them in the future. For example, the record does not contain a solid and favorable prognosis from a health care provider that he is unlikely to use them again, random drug screenings, or other independent documentation to verify his non-usage and mitigate the security concerns. While he appears to be performing well at his job and in school, that information is not sufficient to find that he no longer poses a security risk.

Overall, the record evidence leaves me with concerns as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his 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 through 1.c:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge