



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



In the matter of:)	
)	
)	ISCR Case No. 14-04153
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara Karoian, Esq., Department Counsel
Chris Morin, Esq., Department Counsel

For Applicant: *Pro se*

10/21/2015

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the security concerns generated by his illegal marijuana use .
Clearance is granted.

Statement of the Case

On October 10, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing a security concern under Guidelines 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).

Applicant answered the SOR on October 14, 2014, admitting the allegation and requesting a hearing. I was assigned the case on June 9, 2015. On July 21, 2015, a notice of hearing was issued scheduling the case for August 13, 2015. At the hearing, I received one Government exhibit (GE 1), and considered Applicant's testimony. The transcript was received on August 19, 2015.

Findings of Fact

Applicant is a 30-year-old single man. He has a high school diploma and has taken some vocational educational courses. (Tr. 12) Since 2008, he has been working for a defense contractor as a developmental technician specializing in electronics and fiber optics assemblies. (GE 1 at 12; Tr. 13) He has held a security clearance since 2009. (Tr. 16)

Applicant smoked marijuana once or twice a month from 2001 to 2008. (Tr. 17-18) His marijuana smoking led to an arrest in 2003 and an arrest in 2005. On both occasions, he was charged with possession of marijuana and placed on probation with the requirement that he undergo and pass random drug tests. (Tr. 20; GE 1 at 29)

Applicant stopped using marijuana for four years after obtaining his current job. Then, he used it twice over a one-week period in June 2012. (Tr. 18, 22) On one of these occasions, he purchased it. He attributes this lapse to being "around bad people with bad judgment, and [being] down on hard times." (Tr. 23) Since then, Applicant has not used any marijuana. Also, he no longer associates with his old friends, and is involved in a steady relationship with his girlfriend with whom he purchased a home in 2013. (Tr. 13)

Policies

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), 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 access to classified information will be resolved in favor of national security."

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 security clearance.

Analysis

Guideline H, Drug Involvement

Under this guideline, “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.” (AG ¶ 24). Applicant has a history of using marijuana. Two episodes of marijuana use occurred after he was granted a security clearance. AG ¶¶ 25(a), “any drug abuse,” 25(c), “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia,” and 25(g), “any illegal drug use after being granted a security clearance,” apply.

Most of Applicant’s marijuana use occurred between ages 16 and 23. He has only used marijuana twice since then - a period of seven years - and he has abstained completely over the past three years. He is settled down with a partner with whom he owns a home, and has disassociated from his friends with whom he abused marijuana in the past. AG ¶ 26(a), “the behavior happened so long ago . . . that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment; AG ¶ 26(b)(1), “disassociation from drug-using associates or contacts; AG ¶ 26(b)(2), “changing or avoiding the environment where drugs were used; and AG ¶ 26(b)(3), “an appropriate period of abstinence,” apply.

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 the 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.

Having applied the whole-person concept factors in my analysis of the disqualifying and mitigating conditions of the drug involvement guideline, I conclude that Applicant has mitigated the security concern.

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, Guideline H: FOR APPLICANT

Subparagraphs 1.a: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge