



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 14-06231
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel

For Applicant: *Pro se*

10/13/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant’s use of marijuana was limited to a brief period of experimentation during his freshman year in college more than two years ago. Although he is still in college and knows people who use marijuana, other information about his academic, professional, and personal circumstances, together with the passage of time since his last drug use, are sufficient to mitigate the Government’s security concerns. His request for a security clearance is granted.

Statement of the Case

On February 6, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain a security clearance required for his work with a defense contractor. After reviewing the results of his background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly

consistent with the national interest for Applicant to have access to classified information.¹

On January 16, 2015, DOD sent Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline H (Drug Involvement).² Applicant timely responded to the SOR and requested a decision without a hearing. On May 11, 2015, Department Counsel issued a File of Relevant Material (FORM)³ in support of the SOR. Applicant received the FORM on June 23, 2015, and was advised he had 30 days from the date of receipt to submit additional information in response to the FORM. The record closed on July 23, 2015, without any response to the FORM from Applicant. The case was assigned to me on August 14, 2015.

Findings of Fact

Under Guideline H, the Government alleged that Applicant used marijuana between November 2012 and August 2013 (SOR 1.a); and that he “continue[s] to regularly associate with individuals who continue to use illegal drugs” (SOR 1.b). Appellant admitted both of the allegations in a timely, notarized response. His admission to SOR 1.a establishes as fact that he used marijuana as alleged. As for SOR 1.b, his admission to that allegation does not establish facts that are disqualifying. It merely presents evidence that I have considered in reaching my decision. (FORM, Items 1 and 2) Additionally, I make the following findings of fact.

Applicant is 21 years old and is a student at a state university, where he studies software engineering. Since January 2014, he has been an engineering intern with a defense contractor and requires a security clearance for his internship. From December 2012 until August 2013, Applicant worked on campus as a software engineering intern for a private, nationally-known scientific organization. (FORM, Item 3)

Applicant graduated from high school in May 2012 and began his college education that fall, in September 2012. In November 2012, he tried marijuana out of curiosity with some of his fellow students. Between then and August 2013, he used marijuana a total of five times. He has not used marijuana since August 2013. His use each time consisted of a few puffs from a joint or a pipe that was being passed around. Applicant never bought or sold marijuana, and the marijuana he used was always provided by someone else. Applicant is now in his senior year. Some of the students he knows, including his roommate from his sophomore year, continue to use marijuana. They do not use marijuana in his presence and they do not offer to include him when they use marijuana. Applicant’s parents are aware that he used marijuana because he told them about it. Applicant disclosed his marijuana use when he completed his EQIP.

¹ Required by Executive Order 10865, as amended, and by DOD Directive 5220.6, as amended (Directive).

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 exhibits (Items 1 - 4) proffered in support of the Government’s case.

He has not been diagnosed as drug dependent, and he does not intend to use drugs in the future. (FORM, Items 2 - 4)

Applicant is an accomplished student with a variety of personal and academic interests. He also engages in activities that are conducive to a drug-free lifestyle. He understands that his past drug use is incompatible with his defense contractor internship and with his professional goals after college. (FORM, Items 2 and 4)

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 DOD 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 Government 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, applicants bear a heavy burden of persuasion to establish that it is clearly consistent with the national interest for

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.

them 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" 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

Available information shows that Applicant used drugs five times over a nine-month period over two years ago. The facts established herein raise a security concern addressed, in relevant part, 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.

More specifically, available information requires application of the disqualifying condition at AG ¶ 25(a) (*any drug abuse (see above definition)*). By contrast, Appellant's drug use was experimental and occurred in the context of his first year in college. He has not used illegal drugs in over two years, and his conduct is known to his parents and the Government because he disclosed it of his own volition. Although Applicant still knows people at school who use marijuana, he is not involved in their drug-related activities and has not been tempted to use drugs since his first year in school. Applicant lives a drug-free lifestyle.

All of the foregoing supports application of the following AG ¶ 26 mitigating conditions:

(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

⁸ See *Egan*, 484 U.S. at 528, 531.

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

on the individual's current reliability, trustworthiness, or good judgment;
and

(b) a demonstrated intent not to abuse any drugs in the future, such as: (3)
an appropriate period of abstinence.

On balance, available information is sufficient to mitigate the security concerns raised by his past drug use.

In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guideline H, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is an accomplished student, and his drug use during the first part of his college career was the result of youthful experimentation. He now understands that using illegal drugs is not compatible with his work in the defense industry and his future academic and professional goals. A fair and commonsense assessment of this record shows that Applicant's use of marijuana is no longer a disqualifying security concern.

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: FOR APPLICANT

Subparagraphs 1.a and 1.b: For Applicant

Conclusion

In light of all available information, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge