



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



In the matter of:)
)
) ISCR Case No. 15-00997
)
Applicant for Security Clearance)

Appearances

For Government: Allison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

02/10/2016

Decision

DAM, Shari, Administrative Judge:

Applicant used his wife’s prescribed pain medication for his ankle pain subsequent to surgeries. His physician had previously prescribed the same drug for him. He disclosed the illegal drug use in his security clearance application and during an investigative interview. He mitigated the drug involvement security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On July 16, 2014, Applicant submitted a security clearance application (SF-86). (Item 5.) On August 7, 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline H, Drug Involvement. The action was taken pursuant to DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended (Regulation); and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

On September 1, 2015, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. (Item 4.) On September 30, 2015, Department Counsel prepared a File of Relevant Material (FORM), containing six Items. She mailed Applicant a complete copy of the FORM on October 2, 2015. He

received the FORM on October 20, 2015, and had 30 days from its receipt to file objections and submit additional information. Applicant timely submitted a document, which I marked as Applicant Exhibit (AE) A. He did not file objections to the documents contained in the Department's FORM, and Department Counsel did not object to Applicant's exhibit. All Items and AE A are admitted into the record. On November 5, 2015, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me.

Findings of Fact

In his response to the SOR, Applicant admitted the sole allegation contained in the SOR. His admission is accepted as a factual finding.

Applicant is a 36-year-old employee of a defense contractor. He earned a bachelor's degree in 2002. He is married and has a child. (Item 5.)

When Applicant completed his July 2014 SF-86, he disclosed that between June 2013 and April 2014, he used Vicodin,¹ a medication prescribed to his wife for pain, about 20 times. He said he used the medication to relieve ankle pain he was experiencing after four surgeries. He stated that his physician had previously prescribed the drug for him to alleviate inflammation and pain. In September 2015 his physician again prescribed it for him. (Item 4; AE A.) During an investigative interview in October 2014, he acknowledged that he should not have used his wife's medication and that his actions displayed poor judgment. He denied having a substance abuse problem and has never participated in a treatment program. He does not intend to use illegal drugs in the future. (Item 6.) There is no evidence that Applicant has been arrested, charged, or convicted of a drug-related crime or any other criminal offense. (GE 5.)

Applicant explained that when he disclosed the above information in his security clearance application he "did so with the intent of full disclosure." (Item 4.)

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 (AG) list potentially disqualifying and mitigating conditions, which are useful 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(a) describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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

¹ Vicodin is a DEA Controlled Substance Schedule II drug, prescribed for pain management.

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.” 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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.”

A person who applies 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

Drug Involvement

AG ¶ 24 articulates the drug involvement security concern:

Use of an illegal drug or misuse of a prescription drug² 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.

²AG ¶ 24(a) defines “drugs” as substances that alter mood and behavior, including:

(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.

One drug involvement disqualifying condition in AG ¶ 25(a) could raise a security concern and may be disqualifying in this case: “any drug abuse.”³ This disqualifying condition applies because Applicant admitted that he illegally used his wife’s controlled substance medication about 20 times from June 2013 to April 2014.

AG ¶ 26 provides four potentially applicable drug involvement 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 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; and
 - (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.

AG ¶ 26(a) can mitigate security concerns when drug offenses are not recent. There are no “bright line” rules for determining when such conduct is “recent.” The determination must be based “on a careful evaluation of the totality of the record within the parameters set by the directive.” ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004.) Applicant disclosed in his SF-86 and during an investigative interview that he illegally used his wife’s prescribed medication 20 times from June 2013 to April 2014. He used the medication to alleviate ankle pain subsequent to four surgeries, and because he had been prescribed the drug in the past. He has not used any medication

³AG ¶ 24(b) defines drug abuse as the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

illegally since April 2014. Based on his honest disclosure and the circumstances surrounding his usage, similar conduct is unlikely to recur. AG ¶ 26(a) provides mitigation. Applicant stated in his interview that he does not intend to use drugs illegally in the future. AG ¶ 26(b) has some application.

The evidence establishes mitigation under AG ¶ 26(c). Initially Applicant used Vicodin under prescription subsequent to his surgeries, and abused it after his prescription ran out. He has since received another prescription from his physician, so is no longer abusing his wife's medication. AG ¶ 26(d) is not applicable. Applicant did not abuse drugs that were legally prescribed for him. He has not participated in a substance abuse treatment program. Hence, he did not provide proof of satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, or a favorable prognosis by a duly qualified medical professional.

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.

Under 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 have incorporated my comments under Guideline H in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

The factors in favor of granting Applicant access to classified information are persuasive. When completing his July 2014 SF-86, he honestly disclosed his illegal use of a medication prescribed for his wife, which his physician previously prescribed for him. He explained, during an investigative interview in October 2014, that he used her medication to alleviate his ankle pain, subsequent to four surgeries. He admitted his misconduct and stated he will not repeat the behavior in the future. There is no record of criminal conduct related to the illegal use of drugs. These factors outweigh the facts supporting denial of Applicant's clearance. Overall, the record evidence leaves me without concerns as to Applicant's present eligibility and suitability for a security clearance. He met 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 Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H: FOR APPLICANT

Subparagraph 1.a: For Applicant

Conclusion

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

Shari Dam
Administrative Judge