



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-03249

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel

For Applicant: *Pro se*

12/29/2014

Decision

HOWE, Philip S., Administrative Judge:

On October 5, 2012, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP; SF 86). On August 6, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E (Personal Conduct). 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 on September 1, 2006.

Applicant answered the SOR in writing on August 25, 2014, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on October 1, 2014, and I received the case assignment on October 2, 2014. DOHA issued a Notice of Hearing on October 29, 2014, and I convened the hearing as scheduled on November 19, 2014. The Government offered Exhibits 1 through 5, which were received without objection. Applicant testified. He did not submit any exhibits at

the hearing but asked permission to submit some later. I granted Applicant's request to keep the record open until December 3, 2014, to submit additional matters. DOHA received the transcript of the hearing (Tr.) on November 28, 2014. On December 3, 2014, he submitted Exhibits A to J without objection. The record closed on December 3, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR Applicant admitted all the factual allegations in ¶¶ 1.a, 1.b, and 1.c of the SOR, the only allegations, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 34 years old. He has a high school equivalency diploma. He has taken some college classes. Applicant works for a defense contractor and has since 2004. His income is about \$40,000 annually. He currently has a security clearance and has had one since about 2003. Applicant is married and has three children. (Tr. 10-23, 41; Exhibits 1-5)

Applicant admitted he used marijuana in 2007. He started using marijuana in 2007 because of stress in his personal finances and marriage. He remembers using marijuana four or five times during a four month period in the summer of 2007. Applicant does not intend to use marijuana again. (Tr. 23, 24; Exhibits 1-5)

Applicant admitted using OxyContin, Xanax, and Vicodin in 2007. He used the Vicodin because his cousin had some. The Xanax he used because he was having panic attacks and was under financial stress. He argued with his wife about the finances and other marital issues. His aunt gave him the Xanax from the supply she had for her anxiety. He did not use much, he admitted. His relatives had prescriptions for these medications and they gave them to him to help him with his problems. He used the OxyContin with a cousin in 2000, not 2007 as alleged in the SOR. He also used Adderall with the cousin in 2000. Applicant stopped using the OxyContin and Adderall in 2001 when he got married because he changed his lifestyle. He stated he had no intention to use these three medications without a prescription again in the future. His wife knew he was using the medications when he used them and that caused added marital friction. (Tr. 23-28, 36, 45, 47; Exhibits 1-5)

Applicant still has panic attacks sometimes. He has not had them in a while, he testified. He has spoken with a physician about the chest pains he gets when he has anxiety and that he has anxiety attacks. Applicant has not personally tried to do anything about his anxiety except endure it. He has family members who were diagnosed with schizophrenia and is concerned about using any medication for anxiety or panic attacks. He does not want to be on medication all the time because he has seen what that condition has done to his family members. (Tr. 28, 29, 52)

Applicant stated on his June 2009 e-QIP that he had not illegally used any controlled substances as listed in Question 23 thereof. He also stated that he had not used a controlled substance when he had a security clearance in response to the second part of the question in Question 23 of the 2009 e-QIP. Both of these answers Applicant attested were "true, correct, and complete" in the signature block of the e-QIP. Applicant knew his answers were false and misleading at the time he wrote them. Applicant stated he was not thinking properly when he did not disclose his drug use in 2009 because he was interested in keeping his job to support his family. He was also afraid of getting in trouble. He was also afraid at his hearing that he would be arrested and imprisoned for his drug use and failure to disclose it on his e-QIP. (Tr. 29-32, 53, 54; Exhibits 1-5)

Applicant reported to his security officer in 2012 that in 2009 that he had some financial delinquencies, including a garnishment action and a lien on his house, and that caused the 2012 e-QIP to be completed after those disclosures. As stated, Applicant admitted he failed to disclose his illegal drug use because he was afraid of losing his job. However, in September 2012 Applicant reported to the security office at his employer that he used controlled substances in the past. He did so to relieve his conscience of that burden. Another e-QIP was completed in October 2012 with disclosures about his past illegal drug use. (Tr. 32, 33, 47; Exhibits 1-5)

Applicant received two reprimands from his supervisors. The first was in 2010 when he damaged a piece of furniture he was moving and the second in 2012 when he made a "stupid comment" to his new supervisor. At the same time in 2012 Applicant reported his past controlled substance use in 2000, 2001, and 2007 because he was going to his church more frequently and was trying to change his lifestyle and trying to be honest. Applicant also admitted that in 2000 he used Adderall, which ordinarily is used for attention deficit problems. He also used LSD three times in 2000 according to his 2003 sworn statement and his 2012 disclosure. He never considered himself an addict and never stole anything to support his drug use. Applicant has never attended any drug counseling program because he never thought of himself as an addict. Applicant has not used any controlled substances to include prescription medicines illegally since 2007 and has no intention to resume any use. (Tr. 33-38)

In 2003 when he first applied for a security clearance Applicant signed a statement in which he declared he would not use illegal substances in the future. Applicant acknowledged his actions in 2007 were wrong and contradicted his previous declaration not to use illegal substances. He explained that in 2007 he experienced significant stressors in his life and he used drugs to escape those stressors. Since 2007 he has learned tools to effectively manage his stress. Applicant changed the marital environment in his home. He frequently attends a church and participates in some of its activities. He does not obtain medications from his family members as he did in 2007. He has built up a support network in his church and family. Applicant has been abstinent from such drug or medication use since 2007. (Tr. 47-51, 55; Exhibits A to J)

Applicant submitted six certificates of appreciation for his participation in various company and community activities, dating back to 2005. Applicant's pastor submitted a statement about Applicant and his wife participating in the church's activities, including the children's' religious program. The pastor has known Applicant for 10 years. A senior program manager at Applicant's company submitted a letter attesting to his hard work and integrity. Applicant's wife submitted a statement that he does not use illegal substances and cares deeply about his family. They are trying to raise their sons to have good characters. Finally, a manager at his employer wrote that Applicant is very helpful and hard working on the job. This person considers Applicant to be truthful and trustworthy. (Exhibits A to J)

Applicant was contrite and sincere in his presentation. His answers to questions were given without hesitation. He testified he wanted to be honest about his background. He stated he wanted to do what was right. His total testimony is credible. (Tr. 35, 38)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions 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 the adjudicative process (AG ¶ 2(a)). 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 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.

Under 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 seeks access to classified information enters 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.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and,

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment

qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information:

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations; and,

(4) evidence of significant misuse of Government or other employer's time or resources.

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group;

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment; and

(g) association with persons involved in criminal activity.

Applicant used LSD and OxyContin in 2000. He used marijuana in 2007 several times, along with Xanax and Vicodin for his anxiety attacks. Those medications were prescribed for relatives, who shared them with Applicant to relieve his symptoms. Applicant did not disclose his illegal drug use on his 2009 e-QIP. Applicant had a security clearance since 2003 and continued to have it in 2007 when he used marijuana, Xanax, and Vicodin.

Applicant deliberately omitted and concealed his illegal use of controlled substances in response to the specific questions in Section 23 of the 2009 e-QIP. AG ¶ 16 (a) applies.

Applicant used illegal substances and medications not prescribed for him. He used marijuana and the other controlled drugs while holding a security clearance in 2007. These actions are covered by the guidelines for drug involvement in AG ¶ 25 (g) and criminal conduct in AG ¶ 31 (a). These are several adjudicative issues that indicate questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations that indicate Applicant may not properly safeguard protected information under AG ¶16 (c).

Applicant's conduct in 2000 and 2007 involving the use of illegal or controlled drug substances creates a vulnerability to exploitation, manipulation, or duress. His conduct, if publicly known, would affect Applicant's personal, professional, or community standing. Applicant's church participation and relationship with his sons would be affected if his drug use while he held a security clearance was known. His relationship with his employer would also be adversely affected. AG ¶ 16(e) applies.

AG ¶ 17 provides seven conditions that could mitigate security concerns. Four conditions may apply:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is

unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and,

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant told his security officer in 2012 about his financial debts and that disclosure led to the preparation of a new e-QIP in which he disclosed his illegal drug use. Applicant made the disclosure because he wanted to do the correct thing and relieve himself of the burden of his past actions. AG ¶ 17 (a) applies because Applicant made good-faith efforts to correct the omissions from his 2009 e-QIP, though they were not as prompt as they should have been. He made his disclosure before he was confronted by any authority figure.

Applicant's behavior was infrequent during the past 14 years and so much time has passed that his actions do not cast doubt on his reliability, trustworthiness, or good judgment. The circumstances were also unique in that the stress in his life occurred in widely separated times in his life. AG ¶ 17 (c) applies.

Applicant has taken positive steps to alleviate the stressors, circumstances, and factors in his life that caused his original problem. He is more mature now, with a viable marriage and three sons for whom he cares. He is very involved in his church activities. He disclosed his actions voluntarily to his security officer and has been forthright in all other disclosures. His inappropriate behavior in the past is unlikely to occur because he knows how wrong his actions were in 2000 and 2007. His testimony at the hearing revealed how concerned he is about his past conduct and the need he feels to avoid such conduct in the future. AG ¶ 17 (d) applies.

Applicant's voluntary disclosure about his illegal drug use seven years ago, his frequent church participation, and renewed commitment to his family show he took positive steps to reduce or eliminate his vulnerability to exploitation, manipulation, or duress. AG ¶ 17 (e) applies.

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 an 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant appeared sincere in his contrition for his past misdeeds relating to his drug use. He did commit these acts as an adult. Their duration in 2000 and 2007 were relatively short. He did it voluntarily to relieve himself of anxiety and stress, not thinking of another way to address his concerns and problem. He has not used the controlled substances since the summer of 2007 and then it was only a few times. Those substances were not heroin or other illegal narcotics, but medicines prescribed to other family members. He used them without a physician's prescription, which was wrong to do. However, Applicant has changed his behavior and stated that he has no interest in resuming his past usage. There is no likelihood of a recurrence based on Applicant's non-use for the past seven years.

Applicant admitted he did not make a full disclosure in 2009 about his illegal drug use because he was afraid of losing his job. He has a high school education and a family to support. His concern is understood but disclosure should have been made regardless of his motive. His religious involvement in the past seven to ten years has sharpened his conscience, making it important to him to be truthful in all matters. He explained that was why he made the disclosure in 2012 about his drug use in 2000 and 2007. His self-motivated disclosure counts in his favor.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his personal conduct. I conclude the whole-person concept for Applicant.

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 E:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	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.

PHILIP S. HOWE
Administrative Judge