



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 12-08164
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: Pro se

07/31/2013

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case.¹ Applicant's clearance is denied.

On 14 January 2013, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines H, Drug Involvement, and E, Personal Conduct.² Applicant timely answered the SOR, requesting a decision without hearing. The record in this case closed 6 June 2013, the day Applicant's response to the Government's File of Relevant Material (FORM) was due. Applicant submitted no materials for review. DOHA assigned the case to me 26 June 2013.

¹Consisting of the FORM, Items 1-10.

²DoD acted under Executive Order 10865, Safeguarding Classified Information Within Industry (February 20, 1960), as amended; DoD Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on 1 September 2006.

Findings of Fact

Applicant admitted the SOR allegations, except for SOR 1.b, 2.a, and 2.b. He is a 51-year-old senior staff engineer, who at the time of his January 2012 clearance application (Item 5) had been employed by a defense contractor since February 2005. He is currently unemployed. He seeks renewal of the security clearances he obtained and renewed based on falsified clearance applications he executed in March 1995 (Item 6), December 2004 (Item 7), February 2007 (Item 8), and April 2010 (Item 9).

When Applicant completed his March 1995 clearance application, he answered “yes” to a question requiring him to disclose any illegal drug use ever. He reported using marijuana a couple of times 1980-1981 while in college (SOR 1.a). He failed to disclose (SOR 2.a) that he had used cocaine several times between 1980 and 1988 (SOR 1.b). Based on this clearance application, Applicant received his clearance in August 1995. He was later admitted to a special access program in January 2001 (Item 7). He was also granted additional access in July 2002 (Item 8).

On Applicant’s December 2004 clearance application (Item 7), Applicant denied using illegal drugs within the last seven years or while possessing a security clearance (SOR 2.b, 2.c). These denials were false, because Applicant had used marijuana on several occasions between 2002 and 2004 while he had a clearance (SOR 1.c). He also continued to use marijuana into 2005. However, in December 2004, Applicant’s employer advised him in writing of the potential consequences of using illegal drugs to both his employment and his clearances. Applicant retained his clearances. Applicant repeated these falsifications on his February 2007 clearance application (SOR 2.d, 2.e), and again retained his clearances.

Applicant’s April 2010 clearance application repeated these falsifications yet again (SOR 2.f, 2.g). However, because his special access was also up for renewal, he underwent a counter-intelligence polygraph in June 2011 at another government agency (AGA).³ At the conclusion of the polygraph interview, in response to an open-ended question by the polygrapher, Applicant volunteered the illegal drug use he had previously withheld, as well as the fact that he had self-medicated with marijuana several times from November 2010 to February 2011 (SOR 1.d), to deal with severe pain from several dental procedures. However, Applicant now insists that he never told the polygrapher that he had used cocaine while in college. He claims that he told the polygrapher that he might have used cocaine in college, and now maintains that his memory was probably better in 1995, so if he did not report any cocaine use in 1995, he thinks he did not use cocaine while in college. I find this explanation not credible. Applicant’s cocaine use, although minor, was still more serious than his marijuana abuse. Further, the polygrapher reported cocaine use during a span that went beyond Applicant’s attendance at college. Consequently, I conclude that the polygrapher’s report of Applicant’s drug use is more credible than Applicant’s current claims.

³During Applicant’s May 2012 interview (Item 9), Applicant told the investigator that the interview was in July 2010.

As a result of these disclosures, Applicant's special access was revoked in August 2011 by the AGA. Applicant lost his employment in August 2012 because of a reduction in force, when he was unable to find another position in the company which did not require special access. In May 2012, while this adjudication was pending, Applicant was offered a job with another company, conditioned on his having a clearance. However, because of the pending adjudication, Applicant's clearance could not be transferred to the new job and that employment was terminated in September 2012.

Applicant submitted no work or character evidence. He admitted that he falsified his clearance applications because he feared the consequences for his job and his clearances if he told the truth. He also justified his falsifications because, in his view, he was not a drug abuser, i.e. did not consider that he had a problem with illegal drugs.

Policies

The adjudicative guidelines (AG) list factors to evaluate a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of a clearance. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guidelines are Guideline H (Drug Involvement) and Guideline E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the required judgment, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels deciding any reasonable doubt about an Applicant's suitability for access in favor of the Government.⁴

⁴See, Department of the Navy v. Egan, 484 U.S. 518 (1988).

Analysis

The Government established a case for disqualification under Guideline H, by demonstrating Applicant's illegal drug use during various periods between 1980 and February 2011, including periods during which he had a clearance.⁵ Applicant failed to mitigate the security concerns. Although his drug abuse was neither frequent nor recent, the circumstances under which he used illegal drugs are likely to recur.⁶ Clearly, he knew the company's and Government's policy on illegal drug use and chose to use anyway. The infrequency of his use does not excuse it. Applicant used marijuana sporadically at various times over the last 30 years. He used it when it suited him and did not use when it did not suit him. He used marijuana regardless of its legality, its violation of company guidelines, and its violation of government policy. Given that Applicant used marijuana regardless of these considerations and apparently abstained from marijuana use for periods of more than three years at a time during the 30 years that he used marijuana, he is unable to demonstrate his now-stated intent to abstain from illegal drug use in the future.⁷ Accordingly, I resolve Guideline H against Applicant.

The Government established a case for disqualification under Guideline E by demonstrating Applicant's falsification of his March 1995, December 2004, February 2007, and April 2010 clearance applications, which resulted in his being granted a clearance, initially in August 1995, with subsequent renewals because he was not forthcoming about his drug use until June 2011. He falsified his clearances because he feared he would not get his clearance and lose his job if he told the truth.⁸

None of the Guideline E mitigating conditions apply. The concealed information was relevant to a clearance decision. His eventual disclosures during a June 2011 interview—nearly 16 years after his original clearance was issued based on a falsified clearance application—cannot be considered either forthright or prompt. Just as the infrequency of his illegal drug use does not excuse it, the infrequency of his drug use does not justify his failure to disclose it to the Government when required. Applicant's

⁵¶ 25 (a) any drug abuse ; (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; (g) any illegal drug use after being granted a security clearance.

⁶¶ 26 (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 [Emphasis supplied];

⁷¶ 26 (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.

⁸¶ 16 (a) deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ; (b) deliberately providing false or misleading information regarding relevant facts to an . . . investigator . . . ;

failure to disclose his illegal drug use shows a lack of candor required of cleared personnel. The Government has an interest in examining all relevant and material adverse information about an applicant before making a clearance decision. The Government relies on applicants to truthfully disclose that adverse information in a timely fashion, not only when it is perceived to be prudent or convenient. Further, an applicant's willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the Government relies on to perform damage assessments and limit the compromise of classified information. Moreover, Applicant's continued use of marijuana while cleared, and his willingness to substitute his judgment about what should and should not be reported on his clearance applications, demonstrates poor judgment and unreliability inconsistent with access to classified information. This conduct suggests Applicant is willing to put his personal needs ahead of legitimate Government interests. I resolve Guideline E against Applicant.

Formal Findings

Paragraph 1. Guideline H:	AGAINST APPLICANT
Subparagraphs a-d:	Against Applicant
Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraphs a-h:	Against Applicant

Conclusion

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

JOHN GRATTAN METZ, JR
Administrative Judge