



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 12-11282

**Appearances**

For Government: Melvin A. Howry, Department Counsel  
For Applicant: William F. Savarino, Attorney At Law

September 11, 2013

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing dated April 10, 2012. (Government Exhibit 3.) On March 26, 2013, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines H and E for Applicant. 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 after September 1, 2006.

The Applicant responded to the SOR on April 13, 2013, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on July 2, 2013. A notice of hearing was issued July 3, 2013, and the hearing was scheduled for July 22, 2013. At the hearing the Government presented four exhibits, referred to as Government Exhibits 1 through 4. The Applicant called four witnesses and presented six exhibits, referred to as Applicant's Exhibits A through F. He also testified on his own behalf. The record remained open until close of business on July 29, 2013, to allow the Applicant to submit additional documentation. The

Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A that was admitted without objection. The official transcript (Tr.) was received on July 30, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **REQUEST FOR ADMINISTRATIVE NOTICE**

Department Counsel requested that I take administrative notice of Title 21, Chapter 13 of the United States Code, Sections 802 and 812. Applicant's Counsel had no objection. (Tr. p. 25.) Accordingly, the requested administrative notice was taken.

### **FINDINGS OF FACT**

The Applicant is 61 years old and married. He has a Bachelor's Degree in Engineering and is employed by a defense contractor as a Chief Architect. He is attempting to retain his security clearance in connection with his employment.

Paragraph 1 (Guideline H - Drug Involvement). The Government alleges that the Applicant is ineligible for clearance because he abuses illegal drugs.

The Applicant admitted each of the allegations set forth under this guideline. (See Applicant's Answer to the SOR.) Applicant has been employed in the defense industry for thirty one years. He has held a security clearance at some level since 1978.

Applicant began using marijuana in high school in 1969. He continued to use it off and on until 1978. He estimated on the high side that he used it on about thirty occasions during that period. He also used speed which he referred to as "whites" and mescaline on at least one occasion. During college, he was introduced to cocaine. He used cocaine with varying frequency during his junior and senior year of college at social gatherings. He used cocaine from about 1971 to about 1978. After college, the Applicant moved away from his drug using friends and did not use any illegal drugs for about five or six years. In 1981, he resumed his illegal drug use. He used cocaine with varying frequency from 1981 to 2008. During this period, he held a DoD security clearance as well as special program access. The Applicant admitted that on at least five occasions, from 2000 to 2005, he went to work while under the influence of cocaine and used cocaine while at the worksite. On one occasion he used cocaine in his employer's bathroom. There were other occasions where he used it in the company parking lot. He testified that the cocaine gave him a "pick me up" in the morning to help him wake up and get going. (Tr. p. 108.) From about 1975 to 2008, Applicant estimates that he purchased about \$3,000 worth of cocaine that he used for his pleasure. He also used marijuana in about 2003 and again in 2006 while holding a security clearance as well as special program access. He also used a non-prescription quaalude in the mid 1990's, given to him by a friend at a night club. Applicant stated that he found the use of illegal drugs to be enjoyable, and they also helped him meet

women. He explained that when he and his wife were not in good terms, she gave him permission to go out and find other girls. (Tr. pp. 137 and 139.)

Applicant stated that although he did not know his company policy concerning illegal drugs, he knew DoD prohibited illegal drug use and that the drugs he was using were illegal, but choose to use them anyway because he enjoyed the feeling that they gave him. He testified that most of his cocaine came from his friend, however at times he has purchased it from other people. In 2007 Applicant decided to stop using illegal drugs. (Tr. p. 102.) He said that he was getting old, he was not partying a lot like he used to, and he was tired of lying on the security clearance applications.

In 2009 Applicant was scheduled to take a counter-intelligence polygraph examination for another Government agency, which he stated he took and passed. Just before taking the test, he told the polygrapher that he had not been truthful in answering questions on his security clearance application concerning his use of illegal drugs. Two subsequent polygraph sessions were administered, however, Applicant was unable to successfully resolve testing.

Applicant submitted a statement of intent indicating that he intends to refrain from engaging in any illegal drug activity whatsoever. In the event that he fails to live up to this commitment, his security clearance is subject to automatic revocation. (Applicant's Exhibit B.)

An affidavit from the Applicant's wife indicates that she has not seen the Applicant used any illegal drugs since he stopped in 2007. She was also disappointed to learn of his deception regarding his past drug use, as she has known him to be an honest, open and transparent person. (Applicant's Exhibit C.)

Declarations from professional associates of the Applicant who have worked with the Applicant, or been his supervisor in the past, attest to his work excellence, reliability, trustworthiness, honesty and integrity. Applicant is highly respected by his co-workers and management. His work product has exceeded expectations and he has properly protected classified information at every step of the way. He is recommended for a security clearance. (Applicant's Exhibits D and F.)

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for a security clearance because he has engaged in conduct involving questionable judgment, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations.

The Applicant admitted each of the allegations set forth under this guideline, except 2(h). (See Applicant's Answer to SOR.) Applicant completed a Personnel Security Questionnaire dated October 12, 1989. (Government Exhibit 1.) Question 18(a) of the application asked him if he has ever used any narcotic, depressant, stimulant, hallucinogenic (to include LSD or PCP) or cannabis (to include marijuana or hashish) except as prescribed by a licensed physician? The Applicant answered, "NO."

This was a false answer. Applicant failed to disclose the fact that he had used marijuana, cocaine, speed, mescaline and hashish.

The Applicant completed another Personnel Security Questionnaire dated April 18, 1995. (Government Exhibit 2.) Question 22(a) of the application asked him if he has ever tried or used or possessed any narcotic (to include heroin or cocaine), depressant (to include quaaludes), stimulant, hallucinogen (to include LSD or PCP), or cannabis (to include marijuana or hashish), or any mind-altering substance to include glue or paint), even one-time or on an experimental basis, except as prescribed by a licensed physician? The Applicant answered, "YES," and reported using marijuana on one occasion. This was a false answer. Applicant failed to list the full extent of his marijuana use as well as his use of cocaine, speed, mescaline and hashish.

The Applicant completed an Electronic Personnel Security Questionnaire dated October 17, 2002. (Government Exhibit 4.) Question 27 of the application asked him if since the age of 16 or in the last 7 years, whichever is shorter, has he illegally used any controlled substance, for example marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin ect.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc), or prescription drugs? The Applicant answered, "NO." This was a false answer. Applicant failed to disclose the fact that he had used cocaine and marijuana.

Question 28 of the same application asked the Applicant if he ever illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a position directly and immediately affecting public safety. The Applicant answered, "NO." (Government Exhibit 4.) This was a false answer. The Applicant failed to disclose that he had used cocaine, marijuana and quaaludes while holding a security clearance.

The Applicant completed a Questionnaire for National Security Positions dated August 31, 2007. (Government Exhibit 4.) Question 24(a) asked him if since the age of 16 or in the last 7 years whichever is shorter, has he illegally used any controlled substance, for example marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP etc.), or prescription drugs? The Applicant answered, "NO." This was a false answer. The Applicant failed to disclose that he had used marijuana and cocaine.

Question 24(b) of the same application asked the Applicant if he has ever illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a position directly and immediately affecting public safety? The Applicant answered, "NO." (Government Exhibit 4.) This was a false answer. The Applicant failed to disclose that he has used marijuana and cocaine while holding a security clearance.

Applicant testified that over the years, he consistently answered, "NO," to questions on his security clearance applications concerning his use of illegal drugs

because he was afraid of losing his job and his security clearance if he told the truth. He was also embarrassed about this conduct. He knew it was wrong. He admits that he used to “party a lot” but not anymore. (Tr. p. 107.)

Applicant was interviewed by another Government Agency in November 2009; January 2010, and February 2010. Applicant failed to disclose the full extent of his drug use during these interviews since each time he seemed to disclose more information. Applicant claims that he wanted to “come clean” and disclose all of his drug use.

A declaration from the Applicant’s supervisor dated July 19, 2013, indicates that Applicant is an excellent employee. He was rated as “exceeding expectations.” He has been a tremendous contributor, exhibiting honesty, reliability, trustworthiness and integrity. He is highly recommended for a security clearance. (Applicant’s Exhibit E.)

Four witnesses, including his immediate supervisor and three colleagues, testified favorably on behalf of the Applicant. Each of them were surprised, shocked and disappointed to learn about his illicit drug use. They had no indication that he used illegal drugs by his social conduct or from his work product. He has consistently demonstrated responsibility and his technical product has been correct. In their opinion he has properly handled classified information and simply made an error in judgment that he will not repeat. He is recommended for a security clearance. (Tr. pp. 29 - 81.)

Applicant underwent a substance abuse assessment by a licensed clinical psychologist who has worked in the substance abuse field for more than twenty years. (See Applicant’s Exhibit A and Applicant’s Post-Hearing Exhibit A.) The drug screening result for illegal drugs was negative. His other scores on the test suggest that he has a low probability of developing a substance dependency disorder. Her report states in part, “ After reviewing the result of the drug screen the results of the assessments, and my clinical interview, it is my professional opinion that [Applicant] does not have an illicit drug problem. His commitment to avoid illicit drugs appears credible due to his maturity, stable personality, and emotional conditions, his understanding that this use of illicit drugs was wrong, his more than 67 months of abstinence, his disclosure of the Statement of Reasons to his employer, and his strongly expressed desire to continue his career with [employer].” (Applicant’s Exhibit A.)

## **POLICIES**

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

### Guideline H (Drug Involvement)

*The Concern.* 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.

Conditions that could raise a security concern:

25.(a) any drug abuse;

25.(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution; or possession of drug paraphernalia;

25.(g) any illegal drug use after being granted a security clearance.

Conditions that could mitigate security concerns:

None.

Guideline E (Personal Conduct)

15. *The Concern.* 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.

Condition that could raise a security concern:

16.(a) a deliberate omission, concealment, or falsification of relevant facts from any personnel 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;

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;

- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavioral changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct, which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

## **CONCLUSIONS**

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in drug abuse and dishonesty that demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The

Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has engaged in drug involvement (Guideline H), and dishonesty (Guideline E). The totality of this evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility. Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guidelines H and E of the SOR.

The evidence shows that the Applicant has been using illegal drugs at varying frequencies for nearly forty years, while possessing a DoD security clearance. He knew it was wrong, illegal and against DoD policy to do so, but he did not think he would get caught so he continued to engage in this conduct. He has falsified multiple security clearance applications and has been dishonest when he withheld information from the background investigators. In 2009, he decided that he was getting old and tired of lying to the Government, so he claims that he disclosed the full extent of his past use of illegal drugs. At this point, given the Applicant's history of parceling out the truth, it is still not clear whether he has fully disclosed all of his illegal drug use to the Government.

For many years the Government trusted the Applicant to be honest and truthful when he was not. Applicant intentionally disregarded the law and DoD policy. He not only used illegal drugs at social gatherings but on the company premises while holding a security clearance. Although he has not used illegal drugs in several years, his judgement is warped and raises serious security concerns about his reliability and trustworthiness. Under Guideline H, Drug Involvement, Disqualifying Conditions 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. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline H, Drug Involvement.

Furthermore, beginning in 1989 and continuing to at least 2007, the Applicant deliberately concealed his illegal use of drugs on a number of security clearance applications in response to questions about his drug history. There is no excuse for this misconduct. The Government relies on the representations of its civilian employees and must be able to trust them in every instance. It was only when he met with the polygrapher in 2009, that he revealed his illegal drug use. The Applicant made no prompt, good faith effort to correct his mistakes before being confronted by the polygrapher. The Applicant cannot at this time be deemed sufficiently trustworthy. In fact, he has demonstrated unreliability and untrustworthiness. Under the particular facts of this case, his poor personal conduct is considered a significant security risk, which prohibits a favorable determination in this case. Under Guideline E, Personal Conduct, Disqualifying Condition 16.(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 applies. None of the mitigating conditions are applicable.*

I have also considered the “whole-person concept” in evaluating the Applicant’s eligibility for access to classified information. The Applicant is not a young inexperienced architect. He has worked for the defense industry for thirty-one years, has many years of experience, and understands the requirements of holding a security clearance. He should be a role model for those less experienced in the industry. Instead, he has chosen to use illegal drugs after having been granted a security clearance, and has deliberately falsified his security clearance applications. These are indicators of poor judgment and unreliability that preclude him from security clearance eligibility at this time. There is no excuse for this illegal conduct.

Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole-person assessment of poor judgment, untrustworthiness, unreliability, a lack of candor, an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

A security clearance is a privilege, not a right. In order to meet the qualification for access to classified information, it must be determined that the Applicant is, and has been, sufficiently trustworthy on the job and in his everyday life to adequately protect the government’s national interest. Based upon the conduct outlined here, this Applicant has demonstrated that he is not trustworthy, and he does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline H (Drug Involvement), and Guideline E (Personal Conduct).

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the SOR.

## **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

- Paragraph 1: Against the Applicant.
- Subpara. 1.a.: Against the Applicant.
- Subpara. 1.b.: Against the Applicant.
- Subpara. 1.c.: Against the Applicant.
- Subpara. 1.d.: Against the Applicant.
- Subpara. 1.e.: Against the Applicant.
- Subpara. 1.f.: Against the Applicant.

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Subpara. 1.g.: Against the Applicant.  
Subpara. 1.h.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.  
Subpara. 2.b.: Against the Applicant.  
Subpara. 2.c.: Against the Applicant.  
Subpara. 2.d.: Against the Applicant.  
Subpara. 2.e.: Against the Applicant.  
Subpara. 2.f.: Against the Applicant.  
Subpara. 2.g.: Against the Applicant.  
Subpara. 2.h.: Against the Applicant.

## **DECISION**

In light of all 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 the Applicant.

Darlene Lokey Anderson  
Administrative Judge