



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-00132

Appearances

For Government: Jeff Nagel, Department Counsel
For Applicant: *Pro se*

July 29, 2014

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing dated August 27, 2013. (Government Exhibit 1.) On February 28, 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline H 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.

Applicant responded to the SOR on March 19, 2014, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to an Administrative Judge on April 22, 2014, and set for hearing by video-teleconference on May 20, 2014. Applicant had difficulty entering the military base and the matter was cancelled. The case was assigned to the undersigned on June 2, 2014. A notice of hearing was issued that same day, and the hearing was scheduled for June 11, 2014. At the hearing the Government presented one exhibit, referred to as Government Exhibit 1. The Applicant presented five exhibits, referred to as Applicant's Exhibits A through E. He also testified

on his own behalf. The official transcript (Tr.) was received on June 19, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 22 years old and unmarried. He has a Bachelor's of Science Degree in Computer Science and is employed by a defense contractor as a Data Analyst. He is applying for a 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.

Applicant admitted each of the allegations set forth under this guideline. (See Applicant's Answer to the SOR.) Applicant began using marijuana in high school in June 2008. He explained that he used it to help him deal with the stress of his senior year. (Tr. p. 18.) During college, from July 2009 to December 2013, Applicant continued to use marijuana. He used marijuana about two times a week. (Tr. p. 19.) In total, he estimates that he used it about 100 times a year, and about 500 times in his life. He stated that marijuana helped him through the stress he experienced in college with exams and the academic workload. Marijuana made him relax and helped him sleep at night. (Tr. p. 20.) After graduating from college in December 2013, Applicant continued to use marijuana. (Applicant's Exhibit E.)

In August 2013, Applicant started working for his current employer. (Tr. p. 21.) Applicant testified that he still felt stressed and continued to smoke marijuana. On August 27, 2013, Applicant completed a security clearance application and disclosed his illegal drug use. He stated that he understood the importance of the application, and that he knew he was applying for a security clearance. He also acknowledged that he understood that the use of marijuana is illegal and against DoD policy. (Tr. p. 35.)

After completing the security clearance application in August 2013, and for the following six months, Applicant continued to use marijuana because he enjoyed its use, and it continued to help him with stress. (Tr. p. 22.) He decided to stop using marijuana and his last use occurred on February 2014. (Tr. p. 23.) During the five year period between 2009 and 2014 that he used marijuana, he purchased it many times for his personal use. He last purchased it in February 2014.

Applicant testified that he now believes that his use of marijuana was a stupid mistake. He states that he has several reasons not to use marijuana again. He has finished college and has a job. He no longer associates with individuals who use marijuana. His parents have recently learned that he used marijuana and they are upset about his actions. He understands the health risks and the fact that it is illegal. He states that he has no intention of ever using marijuana again. (Tr. p. 18.) At the time of the hearing, he had not used marijuana for three months.

Applicant is actively involved in a variety of community service organizations, among those are his college fraternity, Americans Helping Asian Children, and The Seany Foundation for pediatric cancer research. (Applicant's Exhibit A, C and D.)

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.

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 met its initial burden of proving that the Applicant has engaged in drug involvement (Guideline H). 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 Guideline H of the SOR.

The evidence shows that in 2008, during high school, the Applicant started using marijuana. He continued to use it throughout college, after graduation, and after obtaining his first job with a defense contractor. Even after completing a security clearance application in August 2013, he continued to use it. He also purchased it for his own use. He knew it was wrong, illegal, and against DoD policy to do so. Applicant intentionally disregarded the law and DoD policy. Applicant's conduct shows immaturity 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* apply. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline H, Drug Involvement.

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. The Applicant is a young, immature, inexperienced, recent college graduate who has used and purchased marijuana on a regular basis for the past five years or so. In February 2014, only three months before the hearing, he decided to stop using marijuana. Applicant has not demonstrated that he can remain drug free for any sufficient amount of time to guarantee the Government that he will not return to his old habits. At this time, Applicant's conduct is an indicator of poor judgment and unreliability that preclude him from security clearance eligibility.

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 qualifications 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).

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 Paragraph 1 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.

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