



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-00228

Appearances

For Government: Jeff Nagel, Department Counsel
For Applicant: Julia Szafraniec, Attorney At Law, The Edmunds Law Firm

July 30, 2014

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing dated August 29, 2013. (Government Exhibits 1.) On March 18, 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines 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 28, 2014, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on May 2, 2014. A notice of hearing was issued May 8, 2014, and the hearing was scheduled for June 12, 2014. At the hearing the Government presented three exhibits, referred to as Government Exhibits 1 through 3. The Applicant presented eight exhibits, referred to as Applicant's Exhibits A through H. He also testified on his own behalf. The official transcript (Tr.) was received on June 20, 2014. Based upon a review of the

pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 31 years old and unmarried with no children. He has a Bachelor's of Science Degree in Computer Science. He is employed by a defense contractor as a Software Engineer. 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.

Applicant admitted each of the allegations set forth under this guideline. (See Applicant's Answer to the SOR.) Applicant started using ecstasy in about October 2000, while in high school, and in his own words, became an addict. He explained that he used it at least once a month at that time. As time passed, he continued to use it and purchase it until February 2013. (Tr. p. 50.) He also used marijuana on a sporadic basis. He last used any illegal drug in February 2013. (Tr. p. 71.) Applicant began working for his current employer in July 2013.

In February 2002 Applicant was arrested for possession of a controlled substance. (Government Exhibit 2.) He testified that at the time of the arrest, he was in a hotel room with a group of underage girls, and everyone was consuming some kind of drug. He was using ecstasy, and had in his possession between 15 - 20 ecstasy pills. Applicant stated that by that point, he was using ecstasy on a regular basis every two weeks or so, and spending between \$100 and \$150 dollars each time he used it. The case was ultimately dismissed in May 2003, but as a consequence of his arrest, Applicant was sentenced to a one-year court-ordered drug-rehabilitation program. During the program, it became clear to the Applicant that he was addicted to ecstasy. Applicant explained that during the treatment program he was able to remain completely drug free, and was subject to random drug screening. He successfully completed the treatment program in April 2003. Following the treatment program, he remained drug free for about two or three years, before he relapsed and started using ecstasy and marijuana again. (Tr. p. 68.)

From 2003 to 2013, Applicant attended college. He explained that it took him ten years to obtain his degree because he attended only part-time and changed his major three times. (Applicant's Exhibit D.) During this time, Applicant lived closely by and associated with other drug users. While in college, Applicant continued to use ecstasy and marijuana on sporadic and varying occasions. Applicant explained that at the time, he worked as an assistant branch manager for a bank and he never let his use of illegal drugs affect his work. (Tr. p. 38.) He also provided financial support for his parents for three or four years before moving out of state. (Tr. p. 39.)

Applicant states that in January 2011, he began to make positive changes in his life. He focused on education and became involved in community outreach programs.

In 2013, Applicant moved from coast to coast to accept his current employment. At that time, Applicant realized that it was time for him to grow up. He stopped using ecstasy and marijuana, and stopped associating with drug users. He wanted to make a better life for himself and live a sober lifestyle. He wanted to pursue his career in robotics and work for the DoD. (Government Exhibit 3.) He provided a copy of a Statement of Intent indicating that he will never use illegal drugs again, and in the event that he does, he consents to automatic revocation of his security clearance. (Applicant's Exhibit H.) Applicant provided the results of two forensic drug tests he took on May 30, 2014, which were negative. (Applicant's Exhibits A and B.) Applicant stated that he is not involved in any after-care drug treatment program or Narcotic Anonymous (NA) meetings to assist in maintain a drug-free lifestyle.

A letter of recommendation from the Director of Social Media for the Applicant's fraternity chapter, who has known the Applicant for the past three years, indicates that Applicant has exceptional leadership skills and noble qualities. As the financial chairman of the chapter, Applicant has been entrusted with a budget of over \$63,000 at one time and has demonstrated that he is responsible with it. He is said to operate with the highest form of integrity and is considered trustworthy. (Applicant's Exhibit C.)

Applicant's performance appraisal for 2014 reflects an overall performance rating that he "meets his job requirements" in every aspect. (Applicant's Exhibit G.)

Applicant's involvement in community outreach programs and philanthropic work concern a number of fraternity led initiatives, individual fundraising totaling over \$15,000, fundraising for Children's Miracle Network, the American Cancer Society, food drives and feeding the homeless. He is also an advisor for the local college chapter of his fraternity that requires leadership training and alumni chapter community involvement. (See Applicant's Answer to SOR.)

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; and

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). 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 the Applicant has used ecstasy and marijuana for about thirteen years, from about October 2000 to at least February 2013 at varying frequencies, and became addicted to ecstasy. He also purchased both ecstasy and marijuana during this time for his own use. He was arrested for possession of ecstasy in February 2002, and ordered by the court to complete a drug treatment program, which he did. Although he was able to remain drug free during the treatment program and for several years following the treatment program, he eventually relapsed and started using ecstasy and marijuana again. Presently, Applicant last used ecstasy in February or March 2013, and started working for a defense contractor four months later, in July 2013. Based upon his past drug history, simply because he has been able to remain drug free for the past year or so does not demonstrate that he can continue to remain drug free. While it is commendable that Applicant has abstained from drugs for a year or so, Applicant was previously drug free for several years before he relapsed, a

relapse that lasted until February 2013. No pattern of abstinence has been established. More time in rehabilitation is necessary in order to guarantee the Government that he will not return to his old habits and place the Government at risk.

Applicant is a 31-year-old college-educated man who, over a thirteen year period, became addicted to ecstasy. Last year, he became employed with a defense contractor and decided to stop using illegal drugs. He has now been drug free for about one year. Given his extensive past history of illegal drug use, he does not meet the eligibility requirements for access to classified information. His recent conduct raises serious security concerns about his reliability and trustworthiness. Under Guideline H, Drug Involvement, Disqualifying Conditions 25.(a) *any drug abuse*, and 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. I have considered all of the evidence, including his favorable letters of recommendation. 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. According to the standards set forth in the Directive, 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.

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.

Subpara. 1.c.: Against the Applicant.
Subpara. 1.d.: Against the Applicant.
Subpara. 1.e.: Against the Applicant.
Subpara. 1.f.: 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