



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-01331

Appearances

For Government: Braden Murphy, Department Counsel
For Applicant: *Pro se*

October 2, 2014

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing dated May 21, 2013, and January 26, 2006; and his security clearance application, standard form 86 dated November 5, 2003. (Government Exhibits 1, 2 and 3.) On May 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 June 23, 2014, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to this Administrative Judge on August 13, 2014, and set for hearing by video-teleconference on September 19, 2014. At the hearing the Government presented four exhibits, referred to as Government Exhibits 1 through 4. The Applicant called one witness and presented four exhibits, referred to as Applicant's Exhibits A through D. He also testified on his own behalf. The official transcript (Tr.) was received on September 29, 2014. Based upon a

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

FINDINGS OF FACT

Applicant is 35 years old and unmarried. He has a Bachelor's of Science Degree in Computer Science and is employed by a defense contractor as a Software Engineer. 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 graduated from college in 2001, and started working for his current employer in October 2003. Shortly thereafter, in November 2003, he completed a security clearance application. In 2004, he was granted a security clearance at the Secret level. Since then, he has held a security clearance at some level of access. His clearance was renewed in 2006, and upgraded to the Top Secret level in 2008.

In April 2010, while holding a security clearance, Applicant started using marijuana for what he described as curiosity, recreational and experimental purposes. (Tr. pp. 29-31.) He used it one to four times a year for a three year period until April 2013. He started using ecstasy about the same time. He used ecstasy four times between April 2010 and September 2012. In July 2013, Applicant used psychedelic mushrooms. He explained that he used these drugs at social events, like music festivals and camping trips with friends. In April 2013, Applicant completed his most recent security clearance application, and disclosed his illegal drugs use. (Government Exhibit 1 and Tr. p. 37.)

Applicant testified that he knew that his use of illegal drugs was against the law, and that he was in violation of his company policies, and DoD zero tolerance drug policies. (Tr. pp. 29-30.) Although he is subject to random drug tests through his employment, he has never been selected to undergo one. (Tr. p. 29.)

Since his use of psychedelic mushrooms in July 2013, Applicant has not used any illegal drugs, and indicates that he has no intentions of ever using any illegal drugs in the future. He submitted a statement of intent to enforce this commitment. (See Applicant's Exhibit D.) He testified that he now has only limited contact with his associates that use illegal drugs, and they know that he no longer uses drugs. He explained, "Specifically, I am aware of their drug use and, so, if I am invited or I know of an occasion where I feel they are likely to be partaking in illegal drugs, I will decline the invite. I will instead choose to socialize with those same people in other context where I know they will likely not be using illegal drugs, such as somewhere more public or at someone's place where the host of the event is not in that same social circle and does

not partake of drugs themselves. So, I am more assured that the emphasis of that social interaction will not be about using drugs.” (Tr. p. 34.) Applicant admitted that the last time someone offered him illegal drugs was in May 2014. (Tr. p. 36.)

Applicant contends that he has now made a positive permanent lifestyle change by discontinuing his use of illegal drugs. He has done this for the benefit of improving his health and because he is aware of its illegal nature and the drug policies of his employer and the Government. (Tr. p. 33.)

A friend, who works as a Systems Analyst, and who met the Applicant through another friend in 2012, testified that the Applicant is polite, respectful, reliable and trustworthy. She has never seen the Applicant use illegal drugs, but knows that his use is rare and infrequent. She stated that she only knows about his illegal drug use because he has told her about it. She, herself, is an illegal drug user, and last used ecstasy about four days before the hearing. (Tr. pp. 42-49.)

A letter of recommendation from an attorney who has served with the Applicant on the board of a volunteer-driven non-profit organization testified that the Applicant is well-rounded, smart, motivated, productive, modest, honest, trustworthy, giving, responsible, friendly and genuine. She has never observed him using illegal drugs. She believes, however, that he will completely abstain from all illegal drug use going forward. (Applicant’s Exhibit A, page 1.)

A letter from the President of a non-profit organization who met the Applicant in 2009 stated that Applicant is trustworthy and reliable. He has spent considerable time with the Applicant and witnessed him partake in recreational drugs on three occasions, and only in very limited social settings like camping. In his opinion, Applicant is consistently reliable even in those settings. (Applicant’s Exhibit A, page 3.)

Applicant’s performance evaluation and development summary for 2013 indicates that he “meets requirements” in every category. He is also described as being detailed and efficient, a good listener, very helpful and easy to work with. (Applicant’s Exhibit C.)

On September 3, 2014, Applicant voluntarily underwent a forensic drug test using his hair as a specimen. The results were negative. (Applicant’s Exhibit B.)

A letter of intent signed by the Applicant on September 11, 2014, indicates that he has no intentions of ever using any illegal drugs in the future, and any violation of the statement of intent or DoD Directive 5220.6 may result in the immediate revocation of his security clearance. (Applicant’s Exhibit 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;

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

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 Applicant started using illegal drugs while employed with a defense contractor and six years after he was granted a security clearance. He knew it was wrong, illegal, against his company policy as well as 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*, and 25.(g) *any illegal drug use after having been granted a security clearance* apply. Applicant contends that he has no intentions of using any illegal drug in the future, but has only been drug free for fourteen months. He is commended for his recent decision to live a drug free lifestyle. Despite this, he continues to maintain contact with his friends that use illegal drugs, although admittedly more limited than before. For example, one of his witnesses used ecstasy just days before the hearing. A letter of recommendation from a friend of the Applicant indicates that he has witnessed the Applicant use illegal drugs on three occasions. Applicant testified that he was offered illegal drugs as recently as four months before the hearing. Although he states that he will not use them in the future, the possibility is great that he will. He continues to associate with drug users. None of the mitigating conditions are applicable here. 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 35 years old and holds a security clearance, but conducts himself more like a young, immature, inexperienced, recent college graduate who has recently been experimenting with illegal drugs. This is puzzling. Applicant does not demonstrate the level of maturity, responsibility or the characteristics expected of an employee who has worked for the defense department and held a security clearance for the past ten years. At this point, the Applicant has not demonstrated that he can remain drug free for any sustained amount of time to guarantee the Government that he will not return to his old habits. Applicant's illegal conduct is too recent and a clear 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.

Subpara. 1.c.: Against the Applicant.

Subpara. 1.d.: 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