



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-01715

Appearances

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

January 22, 2015

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing dated September 28, 2013. (Government Exhibit 1.) On August 11, 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines H and G 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 August 28, 2014, and he requested a hearing before a Defense Office of Hearings and Appeals Administrative Judge. This case was assigned to this Administrative Judge on October 21, 2014, and set for hearing on December 3, 2014. At the hearing the Government presented two exhibits, referred to as Government Exhibits 1 and 2. The Applicant presented seven exhibits, referred to as Applicant's Exhibits A through G. He also testified on his own behalf. The official transcript (Tr.) was received on December 15, 2014. Based upon a review

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

FINDINGS OF FACT

Applicant is 30 years old and single. He has a Bachelor's 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 to each of the allegations set forth under this guideline. (See Applicant's Answer to the SOR.)

Applicant has a history of illegal drug use and addiction from 2009 until April 2013. He has used a variety of illegal drugs, including marijuana and ecstasy; painkillers, hydrocodone and oxycodone; and the anxiety drug, xanax, without a prescription. He became addicted to both the pain killers and the anxiety drug he used without prescriptions. Since September 2013, Applicant has been working for his current employer.

He testified that he began using marijuana in 2009 at the age of 25 on a daily basis. He explained that he had a stressful job and was depressed about leaving college and all of his friends. From 2009 until March 2013 Applicant usually used marijuana every evening. He enjoyed the way it made him feel and it helped him relax. He normally purchased about an eighth of an ounce of marijuana once every two weeks, spending \$50 on each purchase for his own use.

From June 2009 to August 2012 Applicant was using the painkillers, hydrocodone and oxycodone, three times a day, to deal with chest pain he experienced from complications with acid reflux. Applicant purchased the prescription drugs from a friend, and over the course of his use, he spent tens of thousand of dollars on the drug. (Tr. p. 49.)

From January 2011, to April 2013 Applicant was also using the anxiety drug, xanax to help him sleep at night. He also purchased this drug from a friend.

By February 2012 Applicant had become addicted to the pain killers and was consuming alcohol to excess. He knew that he was building up a tolerance to the pain killers. He realized that the drugs were not only expensive but they were beginning to threaten his health and he needed to stop using them. By early 2012 he started to make changes. In May 2012 he met with his doctor who referred him to a psychologist who placed him on medication to help him to withdraw from his illegal drug addiction. At that time, Applicant was diagnosed with Opiate Dependence, Marijuana Abuse, and Alcohol Dependence, in Remission. At that time, Applicant was placed on another drug

Suboxone, a partial opiate, to help manage his Opiate Dependence. (Applicant's Exhibits A and B.)

In early 2013 Applicant had problems staying awake at work due, in part, to his drug usage and excessive alcohol consumption. In January 2013 his employer gave him a written reprimand and suspended him for one day after he was found asleep on the job. In March 2013 Applicant was terminated by mutual agreement after he was found sleeping on the job again.

In April 2013 Applicant's addiction to xanax caused him to obtain inpatient treatment for a condition diagnosed as Benzodiazepine Dependence and Opiate Dependence. He was referred to an outpatient program from April 2013 to June 2013 for a condition diagnosed as Benzodiazepine Dependence, Opiate Dependence, Major Depressive Disorder-Recurrent, Mild, and Generalized Anxiety Disorder.

Applicant explained that for the past twenty months, he has been completely drug free. He has tried to fill his life with positive things to avoid the temptation of drugs and excessive alcohol abuse. He now goes to church and bible study on a regular basis. He walks four miles a day, and goes to yoga. He uses herbs and supplements which have been helpful, and he sees a medical massage therapist to help him sleep.

Paragraph 2 (Guideline G - Alcohol Consumption). The Government alleges that the Applicant is ineligible for clearance because he abuses intoxicants.

Applicant admitted to each of the allegations set forth in the SOR under this guideline. (Applicant's Answer to SOR.) Applicant has a long history of alcohol abuse that includes a diagnosis of alcohol dependence, followed by continued alcohol consumption. He claims that he has been drug free for the past twenty months, but he continues to consume alcohol.

Applicant explained that when he turned 21 years old, alcohol consumption became a regular habit. He began by drinking about three or four beers each time. As he grew a tolerance to the alcohol, he increased the amount he would consume. He believes that from late 2010 until May 2012 he drank excessively. He enjoys consuming alcohol, and testified that he continues to drink and usually consumes one or two glasses of wine in the evenings about two to four times a week. (Tr. p. 52.) He has never considered himself an alcoholic. There have been times that Applicant has tried to stop drinking. For example, in May 2012, Applicant quit drinking for a short period while transitioning to Suboxone. He again stopped consuming alcohol from April or May 2013 to November 2013. He testified that just three days before the hearing in this matter he consumed alcohol.

Applicant's alcohol consumption also contributed to his problems on the job in December 2012, or January 2013, when he began falling asleep at work. At the time, he was mixing alcohol with his prescription medication. Applicant specifically asked his physician if he could consume alcohol while taking the Suboxone, and was told that it

was not recommended. (Tr. p. 67.) As discussed above, Applicant was warned by his employer and then eventually terminated from his employment for this conduct.

A letter from a coworker of the Applicant indicates that Applicant is reliable, talented, and trustworthy on the job. He is considered mature, has sound judgment, and completes his tasks on time and within budget. (Applicant's Exhibit C.)

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

25.(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence.

Conditions that could mitigate security concerns:

None.

Guideline G (Alcohol Consumption)

21. *The Concern.* Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

Conditions that could raise a security concern:

22.(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent; and

22.(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence.

Condition 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 alcohol abuse 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) and alcohol abuse (Guideline G). 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 G of the SOR.

The evidence shows that Applicant's history of illegal drug use and excessive alcohol consumption caused him not only physical problems but problems on his job that resulted in him being terminated. His abuse of prescription painkillers without a prescription, over a sustained period of time, caused him to develop a serious addiction. All along he knew that his drug use was wrong, illegal, and against 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.d. *diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence* apply. None of the mitigating conditions are applicable.

Furthermore, Applicant was also diagnosed with alcohol dependence. Under Guideline H, Alcohol Consumption, Disqualifying Conditions 22.(c) *habitual or binge*

consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent, and 22.(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence apply. None of the mitigating conditions are applicable. Applicant continues to drink despite the fact that it is not recommended by his physician. Accordingly, I find against the Applicant under Guideline H, Drug Involvement, and Guideline G, Alcohol Consumption.

Applicant claims that he has been drug-free for twenty months. He is commended for his recent decision to live a drug-free lifestyle. Despite this, he continues to consume alcohol, although admittedly more limited than before. However, given the fact that he was diagnosed with alcohol dependence, he should not consume alcohol at all, and takes the big risk of easily falling back into his old habits.

I have also considered the “whole-person concept” in evaluating the Applicant’s eligibility for access to classified information. The Applicant is 30 years old, but conducts himself more like a young, immature, inexperienced, recent college graduate who has recently been experimenting with illegal drugs and abusing alcohol. This is puzzling. Applicant does not demonstrate the level of maturity, responsibility or the characteristics expected of an employee who works for the defense industry and wants access to classified information. At this point, although Applicant has been drug free for twenty months, he continues to consume alcohol. Given the extensive nature of his addictions, to both drugs and alcohol, he must remain completely sober and drug free for a substantial period 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 at this time.

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.

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.

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.

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