



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 14-01847  
 )  
 )  
Applicant for Security Clearance )

**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 Questionnaires for Investigations Processing dated August 30, 2005, and November 7, 2013. (Government Exhibits 1 and 2.) On July 28, 2014, the Defense of Defense (DoD) 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 August 12, 2014, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on September 25, 2014. A notice of hearing was issued October 1, 2014, and the hearing was scheduled for December 2, 2014. At the hearing the Government presented three exhibits, referred to as Government Exhibits 1 through 3. The Applicant presented nine exhibits, referred to as Applicant's Exhibits A through I. He also testified on his own behalf. After the record closed, Applicant submitted two Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A and B, that were

admitted without objection. The official transcript (Tr.) was received on December 10, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **FINDINGS OF FACT**

The Applicant is 33 years old and married with one child. He has a Bachelor's Degree in Engineering. He is employed by a defense contractor as a Project 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.

The Applicant admitted each of the allegations set forth under this guideline. (See Applicant's Answer to the SOR.)

Applicant was introduced to marijuana at the age of fifteen, by his neighbor and best friend who lived across the street. They met in third grade, and over the years grew to be best friends. It became their habit to smoke marijuana together. Applicant's best friend always provided the Applicant with the marijuana they smoked. From 1997 to 1999, while in high school, the Applicant used marijuana about three-or-four times a week. From 1999 to 2004 while in college, the Applicant and his best friend grew apart, but continued to use marijuana together at least once a year and Applicant smoked marijuana on several other occasions with friends from college. Applicant testified that usually his use of marijuana occurred at parties, holidays, and during the summers. In total, Applicant estimates that he has used marijuana at least 200 to 300 times, and no more than 500 times. (Tr. p. 65.)

In 2005, Applicant got his first real engineering job, and started working for a defense contractor. At that time, he also applied for and was granted a security clearance. He knew that the application process required a drug test, and he passed it. (Tr. p. 44.) Applicant continued to use marijuana on about four occasions after being granted a security clearance, until he claims that he stopped in 2009. He testified that when he smoked marijuana he would smoke it with his best friend at least once a year when he saw him. (Tr. p. 72.) Applicant did research on marijuana and had convinced himself that using marijuana was no big deal. (Tr. pp. 61 and 75.) In retrospect, Applicant acknowledges that he was "an idiot." (Tr. p. 78.)

In 2012, Applicant started a new job working for his current employer. He knew the work place had a no drug policy. He testified that his security clearance transferred with him to his new place of employment. (Tr. p. 80.) A year later, in 2013, it was required by his employer that Applicant upgrade his security clearance to SCI. (Tr. p. 54.) At that time, Applicant was required to complete another security clearance application. This time, Applicant revealed his history of marijuana use. (See Government Exhibit 2.)

Despite his past use of marijuana, Applicant was able to do well in school and on the job. (Applicant's Exhibit A, B, C and D.) His recent performance appraisals for the periods from April 1, 2012, through March 31, 2013; and April 1, 2013, through March 31, 2014, reflect an overall rating of "high meets." (Applicant's Exhibits E and G.) He is considered a highly-valued member of the project engineering team and is respected by all levels of engineering management. (Applicant's Exhibits E and G.) In November 2013 Applicant received a job promotion and a pay increase of 5.0%. (Applicant's Exhibit F.)

Letters from a previous employer, and current coworker who has managed Applicant in the past, testified that in their opinion, Applicant is highly intelligent, professional and trustworthy. He has never been known to violate any of the rules associated with protecting classified information. He is very self-disciplined, and a hard worker. He is a good leader, colleague and friend. He fulfills his commitments and is considered to be a brilliant engineer. (Applicant's Exhibit H.)

A letter from a senior engineer at his present company, who has worked closely with the Applicant in the past, and who recommended him for his current position, indicates that Applicant is trustworthy, reliable, honest and of integrity. In his opinion, Applicant consistently exhibits extreme care in properly protecting classified information. Applicant has never had a security violation, and his technical expertise and specific skill set is considered to be a great benefit to the company. Applicant is recommended for a security clearance. (Applicant's Post-Hearing Exhibits A and B.)

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 the allegations set forth under this guideline. (See Applicant's Answer to the SOR.) Applicant completed a security clearance application dated August 30, 2005. (Government Exhibit 2.) Question 24(a) of the application asked the Applicant if since the age of 16 or in the last 7 years, has he illegally used any controlled substance? The Applicant responded, "NO." This was a false response. The Applicant failed to list his use of marijuana from 1997 to 2009.

Applicant explained that when he filled out his first security clearance application in 2005, he was not truthful. He realizes that he should have revealed his illegal drug use. He stated that at that time he did not understand the gravity of the paperwork, and he did not want to lose his job. (Tr. p. 47.)

Applicant testified that over the past five years, he has made some positive changes in his life. He stopped using marijuana in 2009. He got married in 2011, and had a child in 2013. He also admitted his marijuana use on his most recent security clearance application in November 2013. (Government Exhibit 1.) He is the sole financial provider for his family and takes his position at work seriously.

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

Conditions that could mitigate security concerns:

26.(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

26.(b) a demonstrated intent not to abuse any drugs in the future, such as:

(1) disassociation from drug-using associates or contacts;

(2) changing or avoiding the environment where drugs were used.

### 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) 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;

Condition that could mitigate security concerns:

16.(c) the offense is so minor or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

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 or poor personal conduct (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 used marijuana from about 1997 to 2009, at varying frequencies. In 2005, he started working for a defense contractor and was granted a DoD security clearance, and continued to use marijuana. Applicant testified that he knew his use of marijuana was illegal and against DoD policy. The fact that the Applicant failed to follow rules and regulations demonstrates that he is not an individual whom the Government would find sufficiently trustworthy for clearance. In addition, common sense is one of the very basic character requirements that one must have to be eligible for access to classified information. In this case, Applicant fell short in this area.

Applicant claims that he had convinced himself that the use of marijuana was not a big deal, even though he knew that it was illegal and against DoD policy. Applicant is a college-educated man who has worked in the defense industry for the past ten years. He has no explanation for his misconduct other than to say that he was an idiot, and that he now has a concrete understanding of the eligibility requirements for security clearance holders. Under the circumstances, I find that he intentionally disregarded the law and DoD policy by using illegal drugs while holding a security clearance. He contends that he last used marijuana in 2009, about eight years ago. 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. It can be argued that Mitigating Conditions 26.(a) *the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*; and 26.(b) *a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates or contacts; and (2) changing or avoiding the environment where drugs were used* also apply. Although the Applicant contends that he has not used illegal drugs in several years, his credibility remains in question. More time in a drug free lifestyle is necessary to prove to the Government that he will not return to his old habits. Using illegal drugs while holding security a clearance is such egregious conduct showing warped judgment to some extent, which raises serious security concerns about his reliability and trustworthiness. Accordingly, I find against the Applicant under Guideline H, Drug Involvement.

Furthermore, Applicant deliberately concealed his illegal drug use from the Government in his answer to question 24.(a) on his security clearance application. There is no excuse for this misconduct and poor judgment. The Government relies heavily on the representations of its civilian employees and must be able to trust them in every instance. 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. Mitigating Condition 16.(c) *the offense is so minor or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment* is also applicable, but not controlling here. Although nine years has passed since the Applicant falsified his security clearance application, he did not come forward with the truth until he needed a security clearance upgrade and was required to fill out another application. It can also be argued that since Applicant admitted his marijuana use on his most recent security clearance application that his concealment in the past should be mitigated. I do not find either of these arguments convincing. Applicant was entrusted with the national secrets based upon erroneous information he deliberately provided the Government. His credibility

remains in question. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline E, Personal Conduct.

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 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. 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 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.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: For 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