



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



In the matter of:)	
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-----)	ISCR Case No. 14-02231
)	
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Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: Cathryn E. Young, Attorney At law
Griffith, Young & Lass

April 23, 2015

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing dated April 22, 2013. (Government Exhibit 1.) On October 6, 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 November 21, 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 February 18, 2015. A notice of hearing was issued on February 19, 2015, scheduling the hearing for March 18, 2015. At the hearing the Government presented two exhibits, referred to as Government Exhibits 1 and 2. The Applicant presented thirteen exhibits, referred to as Applicant's Exhibits A through M. He also testified on his own behalf. The official transcript (Tr.)

was received on March 27, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 27 years old and single. He has a Bachelor's Degree in Business Economics and has completed a certificate in Aerospace Project Management. He is employed by a defense contractor as a Project Manager. 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 that occurred from 2005 to at least March 2013. During this period, he used marijuana, ecstasy, hallucinogenic mushrooms, and Xanax, without a prescription. Applicant attended college from September 2005 through December 2010. He began working for his current employer in April 2010. He was initially hired as an intern, but after completing his final class, he was hired as a full time employee. He applied for a security clearance for the first time in April 2013.

During his security clearance background investigation, Applicant self-reported that he used marijuana from 2005 through March 2013. He began using marijuana in high school, and used it then on about three separate occasions. In his junior year of college, he started using marijuana on a daily basis that continued throughout his college career. During this period he also purchased marijuana on a weekly basis for his own use and for friends. Sometimes he sold it to his friends for the amount it cost him to purchase it. (Tr. p. 25-26.) After graduating from college, he reduced his marijuana use, but continued using it. In March 2013, after learning that his employer wanted him to apply for a security clearance, he stopped using marijuana altogether. (Tr. p. 26.)

Applicant testified that he also used ecstasy. He used it several times in high school, and then after graduating from college, he used it with his now ex-girlfriend about two or three times a month until he stopped in November 2012. Applicant used hallucinogenic mushrooms in 2010, on one occasion with his friends during a hike. (Tr. p. 29.) He also used Xanax, on one occasion, that he got from a friend of his in 2009.

He states that he has no intentions of ever using any illegal drug again or any prescription drug that is not prescribed to him. He signed a statement of intent indicating that if he were to ever use any illegal drug again, his security clearance would be subject to automatic revocation. (Applicant's Exhibit B, and Tr. pp. 30-31.) Applicant submitted a drug test report collected on February 27, 2015, conducted on his hair

follicle that was negative. (Applicant's Exhibit A.) Applicant states that he now realizes the responsibilities he has at work and he does not want to jeopardize that. (Tr. p. 31.)

Applicant further testified that his roommate currently uses drugs. (Tr. p. 37.) He continues to socialize with friends that use illegal drugs, but believes they are very responsible and he trusts them. He explained that he has learned to remove himself from the rooms when they are using drugs. (Tr. p. 38.)

Applicant admits that he knew his illegal drug use was against the law. He explained that he self-reported all of his drug and alcohol use to the Government during his background investigation because he wanted to be up front with everything that he has done in the past. (Tr. p. 53.)

Applicant was asked a hypothetical question. If the government placed a condition on him not to associate with friends that use drugs would he still associate with them. Applicant states that he would not personally see them, but he would still contact them though e-mail or texts. (Tr. p. 58-59.)

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.) His history of alcohol abuse began in April 2010 and continued until at least June 2013. During this period he consumed alcohol to the point of intoxication almost every weekend, and on occasion to the point of black out. He explained that it was socially acceptable at the college he attended to consume alcohol to excess with his friends on the weekends. He has never received any treatment or counseling for drug or alcohol use. On one occasion in college he was caught with alcohol in his room and was required to attend an on-campus alcohol program. (Tr. p. 33.)

Applicant's consumption of alcohol continued and occurred mainly on the weekends, and on some occasions during the week. On average, he drank alcohol two or three times weekly, consuming six or so drinks on each occasion. Each time he drank to the point of intoxication. (Tr. p. 35.) Since graduating from college, Applicant continues to drink alcohol about three times a week, but has reduced the amount he consumes. However, he still on occasion drinks to the point of intoxication. He now consumes about three drinks per sitting, mainly beer and wine, but on occasion, he has hard liquor. (Tr. p. 36.) Applicant consumes alcohol to be social. He drinks with his roommate and his friends. (Tr. p. 39.) Applicant believes that he drinks responsibly. Since receiving the SOR he has not consumed alcohol to the level of intoxication that he usually drinks. (Tr. p. 44.) He feels that he has matured and is now more dedicated to his job. He has only decreased his drinking since he has been associating with a different group of people, who don't drink as much. (Tr. p. 37.)

Numerous letters of recommendation from Applicant's supervisor, a co-worker, his roommate, his sister, and friends, indicate that he is considered to be extremely reliable and trustworthy. He is said to be a top performer on the job. He is described as having excellent leadership skills, is well respected by those he works with, and professional in every aspect. His character displays ambition, dedication, integrity, kindness and loyalty. He is highly recommended for a security clearance. (Applicant's Exhibits A through H.)

Applicant's performance reviews for 2014 and 2015 reflect that the Applicant has "met" or "exceeded" the requirements of his job in every category. (Applicant's Exhibits I and J.)

Applicant has received a number of awards, certificates and recognitions for his work at the company during the period from March 2011 through August 2014. (Applicant's Exhibit L.)

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.

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.

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 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) 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.

Applicant claims that he has been drug-free for twenty-four months. He is commended for his decision to live a drug-free lifestyle. It is also clear that he continues to socialize with his friends who use illegal drugs. Obviously his desire to associate with his friends who use drugs is a priority for him. This is a lapse in sound judgment that is puzzling and raises serious questions about his judgment, reliability and trustworthiness.

The argument could be made that the Applicant's use of drugs and alcohol to excess occurred only in college, and when he was hired by his employer the misconduct stopped. This argument will not succeed. The evidence shows that Applicant's history of illegal drug use and excessive alcohol consumption only stopped in 2013, after learning that he might need a security clearance. Applicant was hired by

his employer, a defense contractor, in 2010, and he continued to use and purchase illegal drugs, specifically marijuana and ecstasy. All along he knew that his company prohibited the use of illegal drugs, and that it was against DoD policy and against the law. Moreover, Applicant continues to associate with individuals who use illegal drugs. This conduct shows immaturity and raises serious security concerns about his reliability and trustworthiness. Under Guideline H, Drug Involvement, Disqualifying Condition 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.

Applicant also has a history of alcohol abuse. 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* applies. None of the mitigating conditions are applicable. Applicant drinks on a regular basis. Before applying for a security clearance, each time he consumed alcohol, he drank to the point of intoxication. This indicates some kind of problem. Admittedly, he has now reduced the amount he consumes, but he still consumes alcohol. Given the extent of his reliance on drugs and alcohol over the years, more time in a drug-free lifestyle and sobriety is needed to show the Government that he will not revert to his old ways. Especially, since those he associates with still use illegal drugs and consume alcohol. Accordingly, I find against the Applicant under Guideline H, Drug Involvement, and Guideline G, Alcohol Consumption.

I have also considered the “whole-person concept” in evaluating the Applicant’s eligibility for access to classified information. Applicant is a 27 year-old, young, immature, inexperienced, individual who, for eight years straight, was deeply involved in illegal drugs and alcohol abuse. Although he states that he has stopped using drugs and alcohol, he continues to socialize with people who do. He 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. 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.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: 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