



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-06598

Appearances

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

June 2, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing dated August 9, 2013. (Government Exhibit 1.) On September 27, 2015, the Defense of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines H, E, and J 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 3, 2015, and he requested a hearing before a Defense Office of Hearings and Appeals Administrative Judge. This case was assigned to this Administrative Judge on January 26, 2016. A notice of hearing was issued that same day scheduling the hearing for March 3, 2016, in San Diego. The matter was subsequently rescheduled as a local case, and set for April 8, 2016. At the hearing the Government presented four exhibits, referred to as Government Exhibits 1 through 4. The Applicant presented one exhibit, which was admitted without objection, referred to as Applicant's Exhibit A. The record remained

open until close of business on April 15, 2016, to allow the Applicant to submit additional supporting documentation. Applicant submitted one Post-Hearing Exhibit, which was admitted without objection as Applicant's Post-Hearing Exhibit B. The official transcript (Tr.) was received on April 18, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 60 years old and is married. He has an eleventh grade education. He is employed by a defense contractor as a Maintenance Technician C and a security clearance is necessary 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 has been working for his employer for 34 years, since 1982. He has held a security clearance at various levels, including sensitive compartmented information access, over the past 30 years. He started as a General Custodian in 1982, and has climbed the ranks over the years to Maintenance Technician C.

Applicant admits to using and purchasing marijuana for over 30 years. He started smoking marijuana in 1970, at about the age of eighteen. Over the years he continued to smoke it off and on until 2005, when he stopped for about two years. He returned to using marijuana again in 2007, and continued until 2013. He estimates that over the years he has used marijuana hundreds and maybe thousands of times. In 1998, he started using crack cocaine. He explained that he would mix crack cocaine with marijuana and use it that is called, "primo." He did this about three times a week for about 15 years. (Tr. p. 37.) He used both drugs for recreational purposes to help him relax.

Applicant testified that he knew that using marijuana and crack cocaine was against the law. He also knew that he was violating company policy and Department of Defense security clearance regulations. He stated that he actually prayed that he would stop using the illegal drugs because he knew it was wrong and he was sneaking to do it. (Tr. p. 35.)

On January 4, 2013, Applicant was driving a company pick-up truck and was involved in an on-site accident. Applicant explained that he was leaving the facility cafeteria going back to work. He may have smoked the "primo" mixture the night before, on Sunday. He states that he was not "high" at the time of the accident. He was rushing to get back to work when he accidentally drove the pick-up truck into a security gate. The gate was half-open and Applicant thought that he could get through it before it closed. During the security investigative interview, Applicant admitted to his security officer that on his off-hours he smokes marijuana. Applicant was given a breath

test and passed. Then he was administered a urinalysis and tested positive for marijuana and cocaine. He was suspended from employment on January 4, 2013, and required to meet with Employee Assistance program on January 10, 2013. Applicant was also required to complete drug dependency classes, and complete a return-to-work drug test with negative results for any type of drugs. (Government Exhibits 2 , 3, and 4.)

After the accident, on January 16, 2013, Applicant entered an extensive nine month outpatient treatment program, for alcohol and drug treatment, with weekly group therapy, family therapy, lecture sessions, individual counseling and relapse prevention techniques. He was compliant with all aspects of his treatment program and continued to submit random drug and alcohol screens with all results being negative. (Applicant Exhibit A.) He also attended Narcotics Anonymous meetings. He found this program to be helpful. He states, however, that more than anything, he loves his job and his family, and does not want to jeopardize them. Applicant further stated that he has not used any illegal drug for three years. Although he is eligible to retire, he would like to continue working.

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.

Applicant neither admitted or denied the allegations under this guideline. Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) on August 9, 2013. (Government Exhibit 1.) Question 23 of the questionnaire, regarding illegal use of drugs or drug activity while possessing a security clearance, asked the Applicant, "Have you ever illegally used or otherwise been involved with a drug or controlled substance while possessing a security clearance other than previously listed?" The Applicant responded, "NO," to the question. (Government Exhibit 1.) This was a false response. Applicant deliberately failed to disclose his marijuana and crack cocaine use while holding a security clearance. Applicant stated that he was afraid to disclose this use for fear that he was going to lose his job. (Tr. p. 40.) He also states that he may have been confused by the question at the time, since his company was already aware that he had been using marijuana and crack cocaine at the time he completed the e-QIP.

From 1970 to at least January 2013, Applicant also engaged in poor personal conduct by using and purchasing marijuana and crack cocaine while possessing a security clearance. In January 2013, he tested positive for marijuana and cocaine at work after being involved in an accident on the premises with his company truck.

Paragraph 3 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he has engaged in criminal conduct.

Applicant denied the allegation under this guideline. Applicant's use and purchase of illegal drugs, including marijuana from 1970 to at least January 2013, and cocaine from 1998 to at least January 2013, is a violation of Federal law.

Numerous letters from various individuals who support Applicant's retention of his security clearance include the president of his local union, his manager, and several coworkers on the maintenance team, as well as a long time co-worker and friend. They all attest to Applicant's responsible nature, honesty, enthusiasm and dedication on the job, and his strong sense of integrity. He finishes his job responsibilities in a timely manner, and always gives 100 percent effort. In fact, he is said to always go above and beyond to give a helping hand to others in need. He is well liked, well respected, and recommended for a security clearance. (Applicant's Post-Hearing Exhibit B.)

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.

Condition that could mitigate security concerns:

None.

Guideline J (Criminal Conduct)

The Concern. Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

Conditions that could raise a security concern:

31.(a) a single serious crime or multiple lesser offenses; and

31.(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Condition that could mitigate security concerns:

None.

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;

16.(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

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, criminal conduct 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); criminal conduct (Guideline J); and falsification (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 the above mentioned guidelines.

The evidence shows that the Applicant used marijuana and crack cocaine over the course of a total of at least 30 years while employed with the defense industry holding a security clearance. Applicant knew that his conduct was wrong, and illegal, and prayed that he would somehow quit. In 2013, following a car accident on the premises, and a positive urinalysis for marijuana and cocaine, it was determined by his company that he was using illegal drugs and must be removed from his position. Applicant underwent an extensive drug treatment program and is commended for such. He states the he has now been drug free for three years. However, given the seriousness and egregiousness of his conduct, namely the many years he used illegal drugs while possessing a security clearance, more time in rehabilitation is needed to demonstrate that he will not return to his old habits. At this time, I am not inspired with the confidence that he has permanently stopped all illegal drug use.

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. None of the mitigating conditions are applicable.

There is also evidence to show that when Applicant completed his security questionnaire in 2013, and in response to the question, he failed to disclose his use of marijuana and cocaine while possessing a security clearance. Applicant was not candid or forthright in his responses to questions on his security clearance application concerning his illegal drug involvement. He states that he was afraid to disclose it in fear of losing his job. However, at the time he completed the questionnaire he had already tested positive for marijuana and cocaine on a company urinalysis and had undergone a drug treatment program. The evidence is mixed and confusing as to why Applicant did not answer the question truthfully on his most recent security clearance application. The Government relies on the representations of its civilian employees and must be able to trust them in every instance. Under the particular facts of this case, this is poor personal conduct, and it is considered a significant security risk, which prohibits a favorable determination in this case.

Applicant engaged in poor personal conduct by using and purchasing marijuana and crack cocaine while possessing a security clearance for 30 years. This conduct is

not only illegal, but against DoD and company policies and regulations. Although he was never formally charged of a crime, Applicant continually violated the law for at least 30 years. He also tested positive for marijuana and cocaine on a drug test at work in January 2013.

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*, and 16.(e) *personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group* apply. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline E, Personal Conduct.

Under Guideline J, Criminal Conduct, Disqualifying Conditions 31.(a) *a single serious crime or multiple lesser offenses*, and 31.(c) *allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted* apply. None of the mitigating conditions are applicable.

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 the numerous letters of recommendation written on his behalf. 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 Paragraphs 1, 2, and 3 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.

Subpara. 2.a.: Against the Applicant.

Paragraph 3: Against the Applicant.

Subpara. 3.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