



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-01840

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel

For Applicant: *Pro se*

03/10/2016

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant has not mitigated security concerns regarding his drug use and personal conduct. Eligibility for access to classified information is denied.

History of the Case

On August 26, 2015, Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AGs) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on September 15, 2015, and elected to have his case decided on the basis of the written record. Applicant received the Government's File of Relevant Material (FORM) on October 29, 2015, and did not respond to the FORM. The case was assigned to me on January 6, 2016.

Summary of Pleadings

Under Guideline H, Applicant allegedly (a) purchased and used cocaine with varying frequency while holding a security clearance between 2002 and 2012; (b) purchased and used cocaine with varying frequency between 1984 and 2012; (c) and used various prescription drugs without prescriptions, while holding a security clearance, between 2006 and 2012. These allegations are realleged as personal conduct under Guideline E.

Besides the drug-related allegations urged under Guidelines H and E, separate allegations were advanced under Guideline E only: criminal charges and conviction for entering an automobile (a felony) in June 1982 and three alcohol-related arrests between 1984 and 1997.

In his response to the SOR, Applicant admitted each of the allegations. He offered no explanations or claims with respect to the allegations under each of the guidelines.

Findings of Fact

Applicant is a 52-year-old technician for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant never married and has no children. He attended technical college classes between September 1983 and May 1985 and earned an associate's degree in June 1985. (Item 4) He claimed no military service. Applicant worked for his current employer since June 1985 and has held a security clearance since January 2002. (Items 3 and 4)

Drug use

Applicant was introduced to cocaine in 1984 and used it randomly until 1998 when he increased his use to sporadic use every two to three months. (Item 8) After suspending his cocaine use between 1999 and 2008, he resumed his use in 2008 and used it with varying frequency until April 2012. (Items 4 and 8)

Between 2002 and April 2012, while holding a security clearance, Applicant purchased and used cocaine with varying frequency, typically four times a year. (Items 4-8) In an OPM interview, Applicant assured the agent he voluntarily quit using cocaine

in April 2012. (Item 8) He insisted he no longer has any intention of using cocaine in the future. Without any evidence of continued cocaine use or purchases, Applicant's claims are accepted.

Besides cocaine, Applicant used various prescription drugs without prescriptions between 2006 and 2012. He used these prescription drugs while holding a security clearance. Since his last use in 2012, he no longer uses any drug requiring a prescription, without a prescription.

Criminal history

Applicant's criminal history is considerable. It includes alcohol-related offenses, three in all between 1984 and 1997. (Items 4-8) Since 1997, he has had no reported alcohol-related incidents or reports of other types of criminal offenses. (Items 4-8)

Applicant's criminal history also includes a 1982 felony conviction arising out of his breaking into an automobile with a group of acquaintances with the intention of stealing stereo equipment. (Item 8) Records document that the court ordered him to pay restitution (\$75) and spend two weeks in jail. Since 1997, he has had no reported alcohol-related or other types of criminal offenses.

Endorsements

Applicant provided no character references. Nor did he furnish any performance evaluations or evidence of contributions to his community.

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns."

The AGs must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine

a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

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. AG, ¶ 24.

Personal Conduct

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, 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. AG, ¶ 15.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Applicant is a technician for a defense contractor who purchased and used cocaine over an 18--year period spanning 1984 and April 2012. For much of this time (i.e., between 2002 and 2012) he held a security clearance and presumably was aware the DOD's anti-drug policy in force. Besides his cocaine use and purchases, Applicant used various prescription drugs without prescriptions over a six-year period between 2006 and 2012.

On the strength of the evidence presented, two disqualifying conditions of the Adjudicative Guidelines for drug abuse are applicable: DC ¶ 25(a), “any drug abuse,” and DC ¶ 25(c), “illegal possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.” Because Applicant's cocaine use and non-prescribed prescription drug use is barred by state law in Applicant's state of residence as well as federal law, his use of these drugs are covered by Guideline E as well. DC ¶ 16(c) of Guideline E, “credible adverse information in several adjudicative areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information,” applies to Applicant's situation.

Considering the lengthy history of Applicant's involvement with illegal drugs and non-prescribed drugs, not enough time has elapsed to facilitate safe predictable judgments that he will not return to illegal drug use in the foreseeable future. None of the pertinent mitigating conditions covered by AG ¶ 24 of Guideline H are available to Applicant under the facts of his case. Likewise, none of the mitigating conditions covered by Guideline E are available to Applicant. His lengthy involvement with illegal drugs and

prescription drugs without prescriptions makes safe predictions of future avoidance difficult to invoke. More time is needed to warrant inferences that Applicant is at no reasonable risk to recurrence.

From a whole-person perspective, Applicant has established insufficient probative evidence of his ability to abstain from purchasing and using illegal drugs and non-prescribed drugs without risk of recurrence. Applicant's own acknowledgments of poor judgment in using cocaine and non-prescribed substances are encouraging, but not enough at this time to absorb recurrence risks. Due to the substantial elapse of time since Applicant last committed an alcohol-related or other criminal offense, predictions are warranted that he is no longer at risk to recurrent incidents in the foreseeable future.

Taking into account all of the facts and circumstances surrounding Applicant's lengthy history of illegal drug and non-prescribed drug involvement, he fails to mitigate security concerns related to his drug use. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.f of Guideline H and 2.a through 2.f of Guideline E. Because of the age involved with Applicant's reported alcohol-related incidents without any recurrent offenses, favorable conclusions are warranted with respect to the allegations covered by subparagraphs 2.g through 2.j.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE H: (DRUG INVOLVEMENT): AGAINST APPLICANT

Subparas. 1.a-1.f: Against Applicant

GUIDELINE E: (PERSONAL CONDUCT): AGAINST APPLICANT

Subparas. 2.a-2f: Against Applicant

Subparas. 2.g-2.j: For Applicant

Conclusions

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 Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

