

DATE: December 27, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-24946

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of drug involvement that resulted in a court finding sufficient evidence to convict him for possession of marijuana. Applicant also has a history of excessive alcohol consumption. Attempts to mitigate his criminal conduct, drug involvement, and alcohol consumption were not sufficient to overcome his providing false information on his security clearance application and to a security investigator. Applicant failed to demonstrate it is in the national interest of the United States to grant him a security clearance. Clearance is denied.

STATEMENT OF THE CASE

On 21 August 2002, pursuant to Executive Order No. 10,865, as amended, and Department of Defense Directive 5220.6 (Directive), dated 2 January 1992, as amended, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended referral to an administrative judge to determine whether clearance should be denied or revoked. The SOR was based on Applicant's criminal conduct (Guideline J), alcohol consumption (Guideline G), illegal drug involvement (Guideline H), and personal conduct (Guideline E).

Applicant responded to the SOR on 3 September 2002, by admitting to all of the allegations contained in the SOR and electing to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on 15 October 2002. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the SOR. Applicant received the FORM on 23 October 2002, but failed to respond within the 30 days allotted by the Directive, ¶ E.3.1.7. The case was assigned to me on 12 December 2002.

FINDINGS OF FACT

Applicant is a 27-year-old native-born U.S. citizen who is seeking a security clearance so he can work for a defense

contractor. Item 3. Applicant admitted each of the allegations alleged in the statement of reasons, some with explanation. Item 2. Applicant has a history of engaging in criminal activity, excessive alcohol consumption, and illegal use of drugs. He also failed to fully answer all of the questions on his security clearance application.

Applicant started drinking alcohol after he was graduated from high school. At 21 years of age, he increased his consumption of alcohol. He drank until he was intoxicated four times a month, on weekends, but now only becomes intoxicated on two weekends a month. When intoxicated, he becomes disoriented, his judgment is impaired, and on one occasion, his intoxication caused him to become involved in a fistfight. He does not drink at work or when he is going to drive. He intends to quit drinking when he reaches 30 years of age or is married. Item 4.

From approximately 1994 to June 1998, Applicant used marijuana on many occasions, sometimes almost daily. He also sold small quantities of marijuana to some friends. He used hallucinogenic mushrooms in the summer of 1997. Item 4. On 2 June 1998, after leaving a friend's house where he had smoked marijuana, Applicant was stopped by the police. The police searched Applicant and discovered a pipe containing marijuana residue. As a result, Applicant was tried for possession of a controlled substance. Item 4. Applicant pled not guilty, but the court found adequate facts to justify a finding of guilty. In lieu of entering a finding of guilty, the court continued the case for six months, placed Applicant on unsupervised probation, and suspended his driving license. Items 8, 9. The court also required Applicant to attend drug education and counseling classes. After his court appearance, but three days before he started the court-ordered drug education classes, Applicant used marijuana. Item 2. Applicant completed the drug education classes on 10 January 1999, but refused to attend the drug counseling classes. On 22 April 1999, the court issued a summons for Applicant to show cause for failure to comply with the order to attend the drug counseling. Applicant subsequently completed the program. Item 4.

Applicant falsified his security clearance application, Item 3, by not revealing that he had used marijuana on many occasions and had been charged with a drug offense. He also failed to provide this information when interviewed by a special agent of the Defense Security Service. Item 4.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Order No. 12,968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Exec. Order No. 10,865 § 2. *See* Exec. Order No. 12,968 § 3.1(b).

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. ISCR Case No. 01-20700 at 3 (App. Bd. Dec 19, 2002). *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at *6-8 (App. Bd. May 9, 2001). The

applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Order No. 12,968 § 3.1(b).

A security risk may exist under Guideline J when an individual has a history or pattern of criminal activity because it "creates doubt about a person's judgment, reliability and trustworthiness." Directive, ¶ E2.A10.1.1. Relevant conditions that could raise a security concern under Guideline J and may be disqualifying include the following:

- (1) Allegations or admission of criminal conduct, regardless of whether the person was formally charged. Directive, ¶ E2.A10.1.2.1.
- (2) A single serious crime or multiple lesser offenses. Directive, ¶ E2.A10.1.2.2.

Applicable conditions that could mitigate the security concerns include the fact that the criminal behavior was not recent. Directive, ¶ E2.A10.1.3.1.

A security risk may exist under Guideline G when an individual consumes excessive amounts of alcohol because it "often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness." Directive, ¶ E2.A7.1.1. Applicable conditions that could raise a security concern under Guideline G and may be disqualifying include the following:

- (1) "Alcohol-related incidents away from work, such as . . . fighting. . . ." Directive, ¶ E2.A7.1.2.1.
- (2) Binge consumption of alcohol to the point of impaired judgment. Directive, ¶ E2.A7.1.2.5.

There are no apparent applicable conditions that could mitigate the security concern.

An applicant's improper or illegal involvement with drugs raises questions regarding his willingness or ability to protect classified information. Directive, ¶ E2.A8.1.1.1. Applicable conditions that could raise a security concern include the following:

- (1) Any use of illegal drugs. *See* Directive, ¶¶ E2.A8.1.2.1.
- (2) Illegal drug possession. Directive, ¶ E2.A8.1.2.2.

Applicable conditions that could mitigate the concern include the following:

- (1) The drug involvement was not recent. Directive, ¶ E2.A8.1.3.1.
- (2) A demonstrated intent not to abuse any drugs in the future. Directive, ¶ E2.A8.1.3.3.

A security risk may exist under Guideline E when an individual's conduct, "involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, could indicate that the person may not properly safeguard classified information." Directive, ¶ E2.A5.1.1. Applicable conditions that could raise a security concern and may be disqualifying include the following:

- (1) "The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history, statement, or similar form used to conduct investigations . . . determine security clearance eligibility or trustworthiness." Directive, ¶ E2.A5.1.2.2.
- (2) Deliberately providing false or misleading information concerning relevant and material matters to an investigator. Directive, ¶ E2.A5.1.2.3.

There are no apparent applicable conditions that could mitigate these security concerns.

CONCLUSIONS

The Government established a *prima facie* case that conditions exist under Guidelines J, G, H, and E that Applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Applicant has mitigated some of the security concerns, but not to the extent that it is clearly consistent with the national interest to grant him access to classified information.

The evidence of record demonstrates Applicant's criminal conduct. He was charged with possession of marijuana and the judge found the evidence sufficient to convict him of the offense. Although the case arose over four years ago and was resolved over three years ago, Applicant refused to accept responsibility for his actions by failing to disclose this information on this security clearance application or to the investigator.

Applicant admits he was summoned to court for failing to attend a drug counseling program, Applicant claims the counseling was ordered by his probation officer, not the court, and he was advised by his attorney not to attend the class. I am unconvinced by this claim. The court order was to comply with the terms of his probation. If he had questions about the appropriateness of the probation officer's order, he should have gone back to the court for clarification. Furthermore, I have considerable doubts about Applicant's veracity. Not only did he fail to report his drug use in his application to the DSS investigator, but he also claimed in his 20 March 2001 statement, that he was not trying to mislead the DSS. The offenses just did not "cross [his] mind" and he did not understand the questioning." Item 4 at 5. Yet, in his answer to the SOR, Applicant admits trying to "conceal the information from the Special Agent because he did not want them to know he used drugs in the past. Item 2.

The Government alleged as a reason for not granting Applicant a clearance that he had been drinking for nine years. Without more, this is not a disqualifying condition. In order to be disqualifying, an applicant's consumption of alcohol must be sufficient to impair his judgment. Nevertheless, Applicant admitted to excessive consumption of alcohol to the point where it impaired his judgment. Furthermore, Applicant admits he continues to drink to intoxication and impaired judgment twice a month.

Although Applicant admits using illegal drugs as alleged by the Government in the SOR, he claims that he has not used illegal drugs since the completion of his drug counseling in 1999 (Item 2), that he does not associate with persons who currently use drugs, and he does not "have any plans" to use drugs again (Item 4 at 3). Nevertheless, his attempt to cover-up his use of drugs diminishes the strength of such mitigation.

The crux of this case lies in Applicant's attempt to conceal his drug and criminal conduct from the government by falsifying his security clearance application and his statements to the investigator. Such conduct raises considerable concern for Applicant's judgment, integrity, and reliability.

FORMAL FINDINGS

Formal Findings as required by the Executive Order No. 10,865 § 3, ¶ 7 (*See Directive, ¶ E3.1.25*), are as follows:

Paragraph 1. Guideline J: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Paragraph 2. Guideline G: AGAINST APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.c.(1): Against Applicant

Subparagraph 2.c.(2): Against Applicant

Subparagraph 2.d.: Against Applicant

Paragraph 3. Guideline H: AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: Against Applicant

Subparagraph 3.c.: Against Applicant

Paragraph 4. Guideline E: AGAINST APPLICANT

Subparagraph 4.a.: Against Applicant

Subparagraph 4.b.: Against Applicant

Subparagraph 4.c.: Against Applicant

Subparagraph 4.c.(1): Against Applicant

Subparagraph 4.c.(2): Against Applicant

Subparagraph 4.c.(3): Against Applicant

DECISION

In light of all of 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 Applicant.

James A. Young

Administrative Judge