

KEYWORD: Drugs; Personal Conduct

DIGEST: The Applicant's drug use and falsification of a Government questionnaire has not been mitigated by a sufficient showing of reform and rehabilitation. Adverse inference is not overcome. Clearance is denied.

CASENO: 03-21179.h1

DATE: 06/20/2005

DATE: June 20, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-21179

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's drug use and falsification of a Government questionnaire has not been mitigated by a sufficient showing of reform and rehabilitation. Adverse inference is not overcome. Clearance is denied.

STATEMENT OF THE CASE

On June 22, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on July 19, 2004, and requested that the Decision be made without a hearing. The Department Counsel submitted the File of Relevant Material (FORM) to the Applicant on March 3, 2005. The Applicant was given 30 days after receipt of the FORM to submit any additional information to the Administrative Judge. The Applicant acknowledged receipt of the FORM on March 4, 2005, and elected not to submit any additional information. The case was received by the undersigned for Decision on May 18, 2005.

FINDINGS OF FACT

The Applicant is 29 and single. He is employed by a defense contractor as an Information Engineer, and he seeks to obtain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR and the exhibits.

Paragraph 1 (Guideline H - Drug abuse). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he abuses illegal drugs.

The Applicant admitted in his Answer that he used marijuana at least five times between 1995 and 2001. This was during his service in the United States Navy from 1996 until 2001. At that time the Applicant had an SCI clearance in connection with his service. (Item 4 at Question 11, and Item 7.) The Applicant also admitted in his Answer using Ecstasy one time and contributing to its purchase in November 2000.

In his Answer, the Applicant denied contributing to the purchase of marijuana. However, in an interview in July 2001, the Applicant admitted that, "HE contributed a few dollars towards the purchase of Marijuana and reported this as HIS only involvement with Marijuana." (Item 7.) (Emphasis in original.)

The Applicant answered a set of Interrogatories concerning his drug usage in January 2004. In answer to question 1, concerning his drug use, he stated, "Around May 2000 I experimented once with marijuana and once with ecstasy." (Item 5 at 5.) He further stated in question 2 that he only "experimented" with the drugs.

Paragraph 2 (Guideline E - Personal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process. He is also ineligible for clearance because he engaged in actions which involve questionable judgment, untrustworthiness, unreliability, dishonesty, or unwillingness to comply with rules and regulations.

The Applicant admitted downloading software to his home computer that he did not pay for. In addition, the Applicant also admitted that he took home software programs from his employer and put them on his home computer without permission.

In September 2001, the National Security Agency (NSA) denied the Applicant access to Sensitive Compartmented Information due to his use of illegal drugs and possession of illegal software, as set forth above. (Items 8 and 9.) The Applicant states in his Answer that he never received notice of this event. However, Item 8 indicates that the NSA did advise him of the decision.

On May 3, 2002, the Applicant completed an official DoD questionnaire in which he stated that he had used marijuana or any other illegal drug within the preceding seven years. (Item 4, Question 27.) This statement was a false answer to a material question pertaining to the Applicant's former involvement with illegal substances.

Question 28 of Item 4 asks whether the Applicant had EVER used illegal substances while possessing a security clearance. The Applicant answered this question, "No." This was also a false answer to a material question concerning the Applicant's conduct while holding a security clearance.

The Applicant stated in his Answer that his falsifications were not intentional. The Applicant's statement is not credible, given his different statements.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case will be discussed under CONCLUSIONS, below.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [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 voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

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 a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of drug abuse, dishonest conduct and falsification of Government questionnaires that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a 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

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 granting or 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 or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has used illegal drugs (Guideline H); and that he intentionally made false material statements to DoD (Guideline E).

The Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him.

According to the Applicant, his marijuana use ended three years before the record closed. However, as set forth above, he has a history of lying concerning the true extent of his drug use. Accordingly, one cannot be sure when, or even

whether, the Applicant stopped. The burden is his to show that he has stopped using drugs, and he has not met it. Disqualifying Conditions E2.A8.1.2.1. *Any drug abuse* and E2.A8.1.2.2. *Illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution* apply. None of the Mitigating Conditions apply to this case. Accordingly, Guideline H is found against the Applicant.

The Government relies heavily upon the integrity and honesty of clearance holders, and it is a negative factor for security clearance purposes where an Applicant has deliberately provided false information about material aspects of his or her personal background. In addition, the Applicant admitted dishonest conduct regarding the improper use of software shows poor judgment on his part. Disqualifying Conditions E2.A5.1.2.2. *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 employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities* and E2.A5.1.2.5. *a pattern of dishonesty or rule violations, including the violation of any written or recorded agreement made between the individual and the agency* apply. None of the Mitigating Conditions apply to this case. Guideline E is found against the Applicant.

On balance, it is concluded that the Applicant has failed to overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

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.

Subparagraphs 1.a. through 1.e.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subparagraphs 2.a. through 2.e.: 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.

Wilford H. Ross

Administrative Judge