

DATE: May 25, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-09837

DECISION OF ADMINISTRATIVE JUDGE

JACQUELINE T. WILLIAMS

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Harold J. Tulley, Esq.

SYNOPSIS

Applicant is 42 years old. He had been working since April 2002 as a mechanic for a defense contractor and lost his job in November 2004 since he lacked a security clearance. He began using drugs and alcohol in high school. Applicant used methamphetamines, with varying frequency, from about 1980 to 2001; he also sold the drug. He used and purchased cocaine and marijuana; he once grew marijuana at home. On his security clearance application, he failed to indicate that he had used drugs in the past because he felt he might not get a security clearance. He has been drug-free since October 2001. Applicant has not been rehabilitated long enough to show that he can be trusted with the nation's secrets. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On October 15, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision: security concerns under Guideline H (Drug Involvement) and Guideline E (Personal Conduct). Applicant, represented by counsel, answered the SOR on November 17, 2004 and elected to have a hearing before an administrative judge.

On February 2, 2005, the case was assigned to me. A Notice of Hearing was issued to the parties on February 9, 2005, and the hearing was held on March 2, 2005. The transcript (Tr.) was received on March 11, 2005.

FINDINGS OF FACT

Applicant admitted the allegations, in part, and offered mitigating circumstances. Those admissions are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 42 years old; he was 39 when he completed the Security Clearance Application (SF 86) on May 22, 2002. He had been working since April 2002 as a mechanic for a defense contractor. He lost his job on November 5, 2004 because he did not have a security clearance.

He was in high school when he started using drugs and alcohol; he graduated from high school in 1981. He was married in 1985 and divorced in 1992; he has one daughter and she is now 18 years old.

Applicant used methamphetamines, with varying frequency, to include twice weekly, from about 1980 to at least 1999. From about 1999 to 2001, he used methamphetamines three to five times a week. He sold methamphetamines as well. He also used and purchased cocaine and marijuana. In either 1978 or 1979, he grew marijuana at home; the plant was confiscated by his father when it was discovered.

He hardly ever went to work drug-impaired: "I mean, sometimes I would, you know, like through a weekend, I would do drugs [methamphetamines or other drugs] on a weekend and go to work Monday and still have the effects in me, you know."⁽¹⁾ He continued: "But I never did it [drug use] at they [sic] job or anything."⁽²⁾

When he executed the SF 86, he failed to indicate that he had used drugs in the past. In a sworn statement to a Defense Security Service (DSS) agent, he stated he falsified the information in order to secure the job. He explained: "I knew I was concealing and falsifying information by not listing my drug involvement on the security clearance questionnaire. I was afraid if I put this information on the form, I would not be able to get a security clearance."⁽³⁾

The SF 86 stated he was charged with one DUI (Driving Under the Influence) offense in 1991, whereas he had two other DUI offenses in one night in 1990 that he did not list. All three incidents were related to alcohol use. For the DUI offenses committed in 1990, he was sentenced in March 1991 to 15 days in jail and 72 days of work release. He also had to attend alcohol treatment at a county hospital in Pennsylvania. He attended alcohol education classes as well. He served time for all three DUI offenses concurrently. He was incarcerated for four months and his driver's license was suspended for seven years.

Applicant stated that his SF 86 was filled out and completed by his ex-wife. She entered information about him that she believed to be correct. He signed the SF 86 without reading it. Later on, he found out that information on the SF 86 had been omitted.

Upon his employment as a mechanic for a defense contractor in 2002, Applicant made a very good impression with his coworkers and supervisors. The record is replete with numerous commendations for his outstanding work and letters acknowledging that he is a hard worker and wonderful person.

In November 2001, Applicant was subpoenaed to court on a delinquent child support action. He was so scared when he was summoned to court that on or about October 2001, Applicant stopped using drugs of any kind, including alcohol. He was at least \$15,000 in arrears. He caught up on the child support payments and owes less than \$2,000. "The money that had been spent on those drugs could have gone a long ways toward meeting my other obligations."⁽⁴⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline H, pertaining to drug involvement and Guideline E, pertaining to personal conduct, with their respective DC and MC, apply in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically, these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation, and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative

guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁵⁾ The government has the burden of proving controverted facts.⁽⁶⁾ The burden of proof in a security clearance case is less than a preponderance of the evidence.⁽⁷⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him.⁽⁸⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

No one has a right to a security clearance⁽¹⁰⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹¹⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹²⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹³⁾ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of all the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline H - Drug Involvement: Improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.⁽¹⁴⁾

Guideline E - Personal Conduct: 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. . . .

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions below.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

The government has established its case under Guideline H. Applicant's admissions and the government's documentary evidence support the application of two potentially disqualifying conditions under Guideline H of the Directive, specifically Drug Involvement Disqualifying Condition (DI DC) ¶ E2.A8.1.2.1 (*any drug abuse*), and DI DC ¶ E2.A8.1.2.2 (*illegal drug possession including cultivation, processing manufacture, purchase, sale, or distribution*). These conditions raise security concerns because a person who is involved with drugs raises questions regarding an individual's willingness or ability to protect classified information.

Applicant did not simply experiment with drugs and alcohol, while a teenager, out of curiosity, and then quit. Rather, he continued using methamphetamines, alcohol, cocaine, and marijuana into adulthood from about 1980 to 2001, notwithstanding the illegal nature of his endeavor. He also grew marijuana. Applicant exhibited a pattern of questionable judgment, irresponsibility, and immature behavior. Not only was his drug use rampant, he committed three DUI offenses, which included incarceration for four months and the suspension of his driver's license for seven years. After incarceration, he was ordered to attend alcohol treatment and an alcohol education class. Notwithstanding rehabilitative treatment for his substantive consumption of alcohol, he continued to drink and abuse other drugs. He eventually divorced, was denied access to visitation with his daughter because he was mostly high, financially defaulted on his debts, including child support, all because he preferred using drugs. Finally, when pushed to the wall, after receiving a subpoena to appear in court for delinquent child support in excess of \$15,000, he was scared and at that

moment in October 21, 2001, he became a changed man. Twenty years of drug use cannot be ignored although Applicant's being drug-free is commendable, it is a little too late.

The Drug Involvement Mitigating Condition (DI MC) at ¶ E2.A8.1.3.1 (*the drug involvement was not recent*) applies in this case. Applicant stopped using drugs in October 2001, so he has been drug free a few years. I conclude that his drug use was not recent. I conclude DI MC ¶ E2.A8.1.3.3 (*a demonstrated intent not to abuse any drugs in the future*) does not apply in this case because Applicant abused drugs for at least twenty years, and he did not credibly testify and the record does not support a finding that he has been rehabilitated long enough for me to conclude that his old ways are indeed his past, and not his future.

Based on the record evidence as a whole, the government has established its case under Guideline E. In response to Question 27 of the SF 86 about his use of illegal drugs, Applicant was required to report whether he had used drugs in the past. Likewise, in response to Question 29 of the SF 86, Applicant was required to report whether he had sold drugs in the past. Applicant gave a negative response to both of those questions; so, the issue is whether his negatives answers to the questions were deliberately false. I am persuaded his answers were intentionally false. His inconsistencies undermine and undercut his credibility. Based on his deliberately false answers about using and selling methamphetamines, Personal Conduct Disqualifying Condition (PC DC) ¶ E2.A5.1.2.2 of the Directive applies against Applicant: *[t]he deliberate omissions, 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 responsibility.* I have reviewed the mitigating conditions under Guideline E and conclude none apply.

Considering all relevant and material facts and circumstances present here, the whole person concept, the applicable disqualifying and mitigating conditions, and other appropriate factors and guidelines in the Directive, allegations 1.a through 1.h, 2.a, and 2.b of the SOR are decided against the Applicant. I find that Applicant has failed to overcome the case against him and satisfy his ultimate burden of persuasion. It is not clearly consistent with the national interest to grant Applicant a security clearance.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1., Drug Involvement (Guideline H) AGAINST APPLICANT

Subparagraph 1.a Against Applicant

Subparagraph 1.b Against Applicant

Subparagraph 1.c Against Applicant

Subparagraph 1.d Against Applicant

Subparagraph 1.e Against Applicant

Subparagraph 1.f Against Applicant

Subparagraph 1.g Against Applicant

Subparagraph 1.h Against Applicant

Paragraph 2., Personal Conduct, Guideline E AGAINST APPLICANT

Subparagraph 2.a Against Applicant

Subparagraph 2.b Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly not consistent with the national interest to grant or continue a security clearance for Applicant. Security clearance is denied.

Jacqueline T. Williams

Administrative Judge

1. Tr. at 100-102.
2. Tr. at 101.
3. Ex. 6 (Applicant's Sworn Statement, dated June 8, 2002), at 5.
4. Answer at 3.
5. ISCR Case No. 96-0277 (July 11, 1997) at 2.
6. ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
7. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).
8. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
9. ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
10. *Egan*, 484 U.S. at 531.
11. *Id.*
12. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
13. Executive Order 10865 § 7.
14. Directive, ¶ E2.A8.1.1.1.