

KEYWORD: Drugs; Alcohol; Personal Conduct

DIGEST: Applicant's only drug arrest is mitigated because it is not recent, having occurred in May 2000. His only alcohol-related offense is also mitigated because it occurred more than three years ago and there is no indication of a recent problem. Moreover, his single alcohol-related incident does not indicate a pattern. Applicant was also fully candid on his latest security clearance application, reporting both his drug arrest and his DUI arrest, as well as the fact he held a security clearance at the time of his drug arrest. His failure to disclose his marijuana use in high school on his 1997 security clearance application was an isolated incident, which occurred more than seven years ago, and he provided correct information to an investigator before being confronted with the facts. Clearance is granted.

CASENO: 03-12882.h1

DATE: 01/31/2005

DATE: January 31, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-12882

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's only drug arrest is mitigated because it is not recent, having occurred in May 2000. His only alcohol-related offense is also mitigated because it occurred more than three years ago and there is no indication of a recent problem. Moreover, his single alcohol-related incident does not indicate a pattern. Applicant was also fully candid on his latest security clearance application, reporting both his drug arrest and his DUI arrest, as well as the fact he held a security clearance at the time of his drug arrest. His failure to disclose his marijuana use in high school on his 1997 security clearance application was an isolated incident, which occurred more than seven years ago, and he provided correct information to an investigator before being confronted with the facts. Clearance is granted.

STATEMENT OF THE CASE

On October 22, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order (1) and Department of Defense Directive, (2) issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline H (Drug Involvement), Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant him access to classified information and recommends that his case be submitted to an Administrative Judge.

On November 19, 2003, Applicant answered the SOR and requested a decision on the written record. The Applicant received the File of Relevant Material (FORM), containing sixteen documents, on February 11, 2004. He has not submitted additional information. This case was assigned to me on March 29, 2004.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is a 27 year-old production operator employed by a defense contractor. He is seeking a security clearance.

While attending high school, Applicant used marijuana. On August 15, 1997, Applicant executed a security clearance application (SF 86). In response to question 27, ⁽³⁾ he answered, "no," and failed to disclose his marijuana use (SOR ¶ 3.b).

On May 12, 2000, Applicant was arrested and charged with possession of cocaine and possession of marijuana. At the time of his offense, Applicant held a security clearance that he was granted on November 25, 1997 (SOR ¶ 1.a, 3.a). On June 14, 2000, he began a substance abuse awareness program that he successfully completed on September 26, 2000 (SOR ¶ 1.c). On October 12, 2000, the court placed the drug charges against Applicant on the stet docket (SOR ¶ 1.b).

On June 8, 2001, Applicant was arrested and subsequently sentenced for Driving Under the Influence of Alcohol (DUI). He received a 30 day jail term that was suspended, one year of unsupervised probation, and was ordered to pay a fine and costs of \$205.00 (SOR ¶ 2.a). In addition, he was required to successfully complete a court approved alcohol program. On September 20, 2001, Applicant successfully completed a substance abuse awareness program as required by the court (SOR ¶ 2.b).

On June 26, 2002, Applicant executed a security clearance application (SF 86). In response to question 21 (police record) and in response to 24, ⁽⁴⁾ he answered, "yes," and reported both his drug and DUI offenses. He also reported his illegal drug use in response to question 27 and that he had done so while possessing a security clearance in response to question 28.

On August 19, 2002, Applicant provided a sworn statement to an investigator for the Defense Security Service (DSS). In addition to discussing his drug and DUI offenses, he admitted his use of marijuana in high school.

POLICIES

Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted. Directive E3.1.14. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration 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 decision. This assessment should include the following 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 voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

Guideline H: Drug Involvement

The concern under Guideline H is that 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.

Conditions that could raise a security concern and may be disqualifying under Guideline H include E2.A8.1.2.1, any drug abuse (Disqualifying Condition 1). Conditions that could mitigate security concerns include E2.A8.1.3.1, the drug involvement was not recent (Mitigating Condition 1).

Guideline G: Alcohol Consumption

The concern under Guideline G is that excessive alcohol consumption 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. Conditions that could raise a security concern and may be disqualifying under Guideline G include E2.A7.1.2.1, alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use (Disqualifying Condition 1).

Conditions that could mitigate security concerns include E2.A7.1.3.1, the alcohol related incidents do not indicate a pattern (Mitigating Condition 1). They also include E2.A7.1.3.2, the problem occurred a number of years ago and there is no indication of a recent problem (Mitigating Condition 2).

Guideline E: Personal Conduct

The concern under Guideline E is 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 under Guideline E include E2.A5.1.2.2 (Disqualifying Condition 2). Disqualifying Condition 2 addresses 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.

Conditions that could mitigate security concerns include E2.A5.1.3.2 (Mitigating Condition 2). Mitigating Condition 2 applies when the falsification was an isolate incident, was not recent, and the individual has subsequently provide correct information voluntarily.

CONCLUSIONS

Guideline H: Drug Involvement

Applicant's drug use, including his arrest in May 2000, raises Disqualifying Condition 1. However, there is no evidence of any drug abuse by Applicant for more than four years. Following his arrest, he successfully completed a substance abuse awareness program. Based on the only evidence of record, Applicant's limited marijuana use in high school resulted from peer pressure. He acknowledges his mistake in 2000 and appears intent on not repeating it. Applicant recognizes that further marijuana use will result in the denial of a security clearance. Based on the record, Applicant's drug use was limited to marijuana; he refused the cocaine that was offered to him. Applying Mitigating Condition 1 under all of these circumstances, I find in favor of Applicant with regard to SOR ¶ 1.

Guideline G: Alcohol Consumption

Applicant's DUI in June 2001 raises Disqualifying Condition 1. Following his arrest in 2002, Applicant successfully completed a substance abuse awareness program. He states that he fully understands the danger that drinking and driving poses and he will never do so again. Applicant's only alcohol-related incident occurred more than three years ago, and there is no indication of a pattern of alcohol abuse. Based on the application of Mitigating Condition 1 and Mitigating Condition 2, I find in favor of Applicant with respect to SOR ¶ 2.

Guideline E: Personal Conduct

Applicant's omission of his marijuana use from his 1997 security clearance application and his use of marijuana while possessing a security clearance raises Disqualifying Condition 2. Based on the record, Applicant's false answer on his 1997 security clearance application was an isolated incident that occurred more than seven years ago. Based on the record, it appears that Applicant provided correct information to the investigator before being confronted with any prior use. Moreover, Applicant was most candid on his 2002 security clearance application even before he spoke to an investigator. He fully disclosed both his drug arrest and his alcohol-related arrest. Applicant also acknowledged that his drug arrest occurred while he held a security clearance. This is consistent with his statement that he promptly reported both arrests to his employer. Based on the application of Mitigating Condition 2 under all of these circumstances, I find in favor of Applicant with regard to SOR ¶ 3.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline H: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Paragraph 2. Guideline G: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Paragraph 3. Guideline E: FOR APPLICANT

Subparagraph 3.a: For Applicant

Subparagraph 3.b: For Applicant

DECISION

In light of all the evidence in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Signed

Roger E. Willmeth

Administrative Judge

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.

2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.

3. "Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?"

4. "Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?"