

KEYWORD: Personal Conduct; Criminal Conduct

DIGEST: Applicant, a 27-year-old employee of a defense contractor, failed to mitigate drug, and personal conduct allegations for failure to report drug use while in the Air Force and while holding a security clearance on his security clearance application (SF 86). He also failed to report the information to a security investigator because he forgot it at the time. Clearance is denied.

CASE NO: 04-08939.h1

DATE: 05/17/2006

DATE: May 17, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-08939

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq. , Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 27-year-old employee of a defense contractor, failed to mitigate drug, and personal conduct allegations for failure to report drug use while in the Air Force and while holding a security clearance on his security clearance application (SF 86). He also failed to report the information to a security investigator because he forgot it at the time. Clearance is denied.

STATEMENT OF CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) dated June 7, 2005, 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. It was received by Applicant on June 14, 2005. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement dated June 21, 2005, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on January 4, 2006. 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 in refutation, extenuation, or mitigation. Applicant did so on February 21, 2006 and the case was assigned to me on March 3, 2006.

FINDINGS OF FACT

Applicant admitted all the allegations in the SOR but offered some explanatory information in his responses and interviews with the investigating officer. After a complete and thorough review of the information in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 27-year-old employee of a defense contractor who has worked as a mechanic for his employer since April, 2002. Applicant failed to report drug use that occurred while he was on active duty with the Air Force and while holding a security clearance on Questions 27 and 28 on his SF 86 dated October 15, 2002, and in an interview with an investigator on January 9, 2003. Applicant denied that the omissions were deliberate saying that he was ashamed of his conduct and forgot about the drug use at the time of filing and giving the interview. Applicant received punishment under Article 112A of the Uniform Code of Military Justice for use of drugs in 2000 for which he lost his security clearance and was administratively discharged from the Air Force in September 2000 pursuant to AFI 36-3208

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.

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." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the 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 *See Egan*, 484 U.S. at 531. 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* Executive Order No. 12968 § 3.1(b)

CONCLUSIONS

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

Under Guideline E, Applicant's failure to report his drug use on his SF 86 indicates questionable judgment, unreliability, and unwillingness to comply with rules and regulations and could indicate that the person may not properly safeguard classified information. (E2.A5.1.1.) Specifically, the deliberate omission, concealment, or falsification of relevant and material facts from a personnel security application could raise a security concern and be disqualifying. (E2.A5.1.2.2.); deliberately providing false or misleading information concerning relevant and material matters to an investigator in connection with a personnel security determination (E2.A5.1.2.3.); and a pattern of dishonesty or rule violations. (E2.A5.1.2.5.) His statement that he did not remember the drug use because he was ashamed of it is not credible in view of the detailed accounting of it contained in his statement of August 2000, only a little over two years before filing his SF 86.

Applicant's criminal conduct in failing to report the information and his use of drugs raises issues under Guideline J (E2.A10.1.1) involving a history or pattern of criminal activity creating doubt about a person's judgment, reliability and trustworthiness. An admission of criminal conduct (E2.A10.1.2.1.) and a single serious crime or multiple lesser offenses (E2.A10.1.2.2.) are potentially disqualifying conditions. While the drug use was now over six years ago and would have been mitigated by the passage of time (E2.A10.1.3.1.), Applicant's conduct in concealing the information is recent and is compounded by his admission that he withheld the information because of shame about the conduct.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that the Applicant has offered no evidence to counter the proof and admission of the conduct that disqualify him from holding a security clearance and that it is not clearly consistent with the national interest to grant a security clearance to him.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline E: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Paragraph 2. Guideline J: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

DECISION

After full consideration of all the facts and documents 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. Clearance is denied.

Charles D. Ablard
Administrative Judge