

KEYWORD: Drug Involvement; Criminal Conduct; Personal Conduct; Financial Considerations

DIGEST: Applicant has a history of serious drug abuse from 1988 until 1993. In 2001, while serving on active duty in the Army, he again used an illegal drug, resulting in punishment and an administrative discharge. Applicant made false verbal and written statements to a security investigator concealing his history of drug abuse, in violation of 18 U.S.C. § 1001. Applicant failed to mitigate the security concerns arising from his drug involvement, criminal conduct, and personal conduct. Clearance is denied.

CASE NO: 05-02034.h1

DATE: 06/21/2006

DATE: June 21, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-02034

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of serious drug abuse from 1988 until 1993. In 2001, while serving on active duty in the Army, he again used an illegal drug, resulting in punishment and an administrative discharge. Applicant made false verbal and written statements to a security investigator concealing his history of drug abuse, in violation of 18 U.S.C. § 1001. Applicant failed to mitigate the security concerns arising from his drug involvement, criminal conduct, and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On September 30, 2003, Applicant submitted an application for a security clearance. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive"). On October 26, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under the Directive, specifically Guideline H, Drug Involvement, Guideline J, Criminal Conduct, Guideline E, Personal Conduct, and Guideline F, Financial Considerations.

Applicant answered the SOR in writing on November 11, 2005. He elected to have the matter decided without a hearing.

Department Counsel submitted the government's case in a File of Relevant Material (FORM) dated March 2, 2006. On March 16, 2006, Department Counsel provided a complete copy of the FORM to Applicant, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. Applicant did not submit any matters in response on or before April 15, 2006. The case was assigned to me on May 17, 2006.

FINDINGS OF FACT

Applicant admitted the factual allegations in the SOR, with explanations. (Item 2 at 1-2.) Those admissions are incorporated herein 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 was born in October 1976. (Item 4 at 1.) He began using illegal drugs in about 1988, when he was about 12 years old. (Item 5 at 1.) He used marijuana and cocaine most often. (*Id.*) He tried heroin on a few occasions and used phencyclidine (PCP) once. (*Id.*)

In October 1993, when he was about 17 years old, Applicant voluntarily enrolled in a drug rehabilitation program. (Item 5 at 1.) He attended high school during the day and had a part-time job. Each night he went to a residential facility, where he attended a meeting of Alcoholics Anonymous (AA) or Narcotics Anonymous (NA). (*Id.*) He graduated from high school in June 1994 and left the rehabilitation program in July 1994. (*Id.*; Item 4 at 2.)

In February 1995, Applicant enlisted in the U.S. Army. (Item 4 at 7.) After initial training, Applicant served as a vehicle mechanic at an Army base overseas for one year. (Item 4 at 4.)

In September 1996, Applicant transferred to a military base in the U.S. (Item 4 at 4.) On November 15, 1996, civilian police stopped Applicant for driving with a burned-out headlight. The police ultimately arrested him for drinking alcohol underage, and for driving under the influence of alcohol (DUI). A civilian court found Applicant guilty and sentenced him to six months probation, 40 hours of community service, and a fine. (Item 10 at 2.)

He was married in August 1997, and transferred to an Army base in Europe in May 1998. (Item 4 at 4, 6.) In November 1999, Applicant deployed with his battalion to eastern Europe. (Item 10 at 2.) When he returned to his base in June 2000, he found his wife was pregnant with someone else's child. The couple had a verbal dispute that developed into a physical altercation. (Ex. 10 at 2.) Applicant struck his wife with an open hand and broke a glass table top with his fist. (Item 11 at 2.) His commander referred him for counseling through the Family Advocacy Program. (Item 12 at 1; Item 10 at 2.) Applicant moved into the dormitory.

In February 2001 Applicant used methylenedioxymethamphetamine (MDMA, also known as "ecstasy") while at a club.

(Item 10 at 2.) The following day, Applicant provided a urine sample for testing under the random urinalysis program; the sample tested positive for MDMA. (*Id.*) Applicant's commander imposed nonjudicial punishment consisting of reduction from E-5 to E-4, forfeiture of \$788.00 pay per month for two months, 45 days extra duty, and 45 days restriction. (Item 7.) He was also required to attend a two-day alcohol and drug abuse prevention training course. (Item 10 at 2.) In June 2001, the Army administratively discharged Applicant with a General (Under Honorable Conditions) Discharge. (Item 9; Item 4 at 7, 8.) He was finally divorced from his wife in August 2001. (Item 4 at 6.)

Applicant stayed in Germany and worked as a supervisor for a furniture store run by a non-appropriated fund instrumentality. In December 2002, he began working as a data monitor for a federal contractor. (Item 3 at 2, 3.)

In September 30, 2003, Applicant completed an SF 86, Security Clearance Application. (Item 4.) He properly reported his DUI conviction in 1996 and his nonjudicial punishment in April 2001. In response to Question 27, he properly reported his use of MDMA in February 2001. (Item 4 at 10.) He also disclosed several delinquent debts. (Item 4 at 12.)

On January 7, 2004, a security investigator interviewed Applicant concerning his security clearance application. (Item 10 at 2.) Applicant provided a written statement explaining his living arrangements in Germany and providing detailed information about his use of MDMA in 2001, which resulted in his nonjudicial punishment and administrative discharge from the Army. (*Id.*) In the statement, Applicant made no other representations about any drug use outside the seven-year period that was the subject of inquiry in Question 27 of the SF 86.

On February 19, 2004, a security investigator interviewed Applicant again. (Item 5 at 2.) Initially, Applicant stated his pre-service drug use was limited to smoking marijuana. Subsequently, Applicant detailed his extensive use of illegal drugs between 1988 and 1993, when he was between 12 and 17 years old. (Item 5 at 1.) He added, "The reason I didn't mention this drug problem the first time I was here is because I am not proud of the things I did when I was a teenager. I don't like telling people I don't know, and I don't want people to think that that is the way I am now because it is not." (Item 5 at 1.)

On October 18, 2005, security investigators obtained a credit report reflecting Applicant's pending credit accounts. (Item 14.) The credit report reflected a collection agency asserting a claim for \$6,843.00 for debt to a bank, a charged-off debt to a bank in the amount of \$1,558.00, and an unpaid credit account for furniture in the amount of \$2,074.00. (*Id.*)

On October 26, 2005, DOHA issued the SOR. (Item 1.) The SOR included allegations of conduct not otherwise revealed in the documents and statements discussed above, including Applicant's: use of ecstasy in 1991 (¶ 1.a); use of amphetamine in 1990 (¶ 1.b); use of crystal methamphetamine in 1993 (¶ 1.f); use of barbiturates in 1990 (¶ 1.h); initial falsification of material facts in a verbal statement to security investigator on February 19, 2004 (¶ 3.b); failure to disclose his history of illegal drug use in a written statement dated January 7, 2004. In his Answer to the SOR on November 8, 2005, Applicant admitted the additional allegations. He also indicated that the unpaid debts listed in the

SOR were his wife's accounts, which became delinquent after their separation and divorce.

POLICIES

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." (Directive, ¶ E2.2.1.) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. (*Id.*) An administrative judge should consider 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. (*Id.*)

Initially, the government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, ¶ E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, ¶ E3.1.15.) An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "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.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, § 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline H, Drug Involvement

The security concern under Guideline H, Drug Involvement, is that "[i]mproper 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." (Directive, ¶ E2.A8.1.1.1.) Paragraph E2.A8.1.1.3 of the Directive defines drug abuse as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction."

Under ¶ E2.A8.1.2.1 of the Directive, any drug abuse could raise security concerns. Applicant admits using marijuana, cocaine, heroin, and PCP between 1988 and 1993, and using MDMA once in 2001. This evidence is sufficient to raise this potentially disqualifying condition. Applicant admitted using several other illegal drugs, including amphetamine (¶ 1.b), crystal methamphetamine (¶ 1.f); and barbiturates (¶ 1.h). These admissions are sufficient to establish the facts, even though there is no evidence in the record supporting these allegations.

It is possible to mitigate the security concerns arising from a history of drug abuse. Under ¶ E2.A8.1.3 of the Directive, it may be mitigating where "[t]he drug involvement was not recent." Most of Applicant's drug abuse occurred between 1988 and 1993, when he was between 12 and 17 years old. I find that drug involvement was not recent. However, the evidence also reveals one instance of drug abuse in 2001. I conclude that incident was recent; therefore, this potentially mitigating condition applies only in part.

Under ¶ E2.A8.1.3.2 of the Directive, it may be mitigating where the drug abuse "was an isolated or aberrational event." Considering Applicant's long-term abuse of illegal drugs and his use in 2001 after a lengthy hiatus, I find Applicant's drug use was not an isolated or aberrational event. This potentially mitigating condition is not raised in this case.

Paragraph E2.A8.1.3.3 of the Directive provides that it may be mitigating where the applicant shows a "demonstrated intent not to abuse drugs in the future." Applicant avers he has lived drug-free since 2001, and there is no indication in

the file of any drug abuse since that time. The evidence raises this potentially mitigating condition.

Finally, it may be mitigating where an applicant completes a prescribed drug treatment program and receives a favorable prognosis from a credentialed medical professional. (Directive, ¶ E2.A8.1.3.4.) Applicant attended drug education classes, but it is not clear whether these qualified as drug treatment programs. In any event, there is no evidence of a favorable prognosis, therefore, this potentially mitigating condition does not apply.

Guideline J, Criminal Conduct

The security concern addressed by Guideline J, Criminal Conduct, is that "[a] history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness." (Directive, ¶ E2.A10.1.1.)

Under ¶ E2.A10.1.2.2 of the Directive, it may be disqualifying where an applicant committed "a single serious crime or multiple lesser offenses." Under 18 U.S.C. § 1001, it is a criminal offense to make a false or fraudulent representation in an official statement. As discussed below, Applicant's false statement to a security investigator on February 18, 2004, and his deliberate omissions in a written statement on January 7, 2004, were official statements that violated this federal statute. Also, Applicant's history of criminal conduct includes his DUI in October 1996, a battery against his wife in 2000, and the wrongful use of DMA in February 2001. The available evidence raises this potentially disqualifying condition.

Under the Directive, the security concerns arising from criminal conduct may be mitigated. Under ¶ E2.A10.1.3.1 of the Directive, it may be mitigating when "the criminal behavior was not recent." The greatest part of Applicant's criminal conduct occurred on or before February 5, 2001; therefore, it was not recent. However, Applicant admits making false statements to a security investigator in January and February 2004, which is recent. I conclude this potentially mitigating condition applies only in part.

The Directive, ¶ E2.A10.1.3.2, also provides that it may be mitigating where "the crime was an isolated incident." Applicant's criminal record includes several offenses spread out over numerous years. I conclude this mitigating condition is not raised.

Paragraph E2.A10.1.3.4 of the Directive states it may be mitigating where "the factors leading to the violation are not likely to recur." Similarly, under ¶ E2.A10.1.3.6 of the Directive, it may be mitigating where "there is clear evidence of successful rehabilitation." Since high school, Applicant attended some brief drug and alcohol education classes, but has not presented evidence of successful rehabilitation or information sufficient to persuade me that similar offenses are not

likely to occur in the future. I find these potentially mitigating conditions are not present.

Guideline E, Personal Conduct

The security concern raised under Guideline E, Personal Conduct, is that "[c]onduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the applicant may not properly safeguard classified information." (Directive, ¶ E2.A5.1.1.)

The Directive sets out various factors relevant to an applicant's personal conduct that may be disqualifying. Paragraph E2.A5.1.2.1 provides that "reliable, unfavorable information" demonstrating questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations may be disqualifying. Paragraph 3.a of the SOR alleges Applicant's administrative discharge from the Army with a General (Under Honorable Conditions) discharge is potentially disqualifying. Applicant was discharged for his wrongful use of MDMA. This is reliable information tending to show questionable judgment and an unwillingness to comply with rules and regulations. I conclude the evidence raises this potentially disqualifying condition.

Under ¶ E2.A5.1.2.2 of the Directive, "[t]he deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire" may be disqualifying. Paragraph 3.c of the SOR alleges Applicant deliberately falsified material facts in a written statement dated January 7, 2004. While the statement, on its face, does not appear to contain any misrepresentations, the SOR alleged Applicant falsified the document by omitting certain information. Applicant admitted that allegation in his Answer, thereby relieving the government of the obligation of presenting evidence to establish that fact. I find Applicant falsified his written statement on January 7, 2004; this potentially disqualifying condition is raised.

Paragraph E2.A5.1.2.3 of the Directive provides that it may be disqualifying where an applicant deliberately provides "false or misleading information concerning relevant and material matters to an investigator" in connection with a security clearance investigation. Applicant admitted that he initially falsified his history of drug abuse during an interview with a security investigator in February 2004. I find Applicant's history of drug abuse was material and relevant, and that his false initial statements raise this potentially disqualifying condition.

Under the Directive, an applicant may mitigate the security concerns arising from questionable personal conduct. (Directive, ¶ E2.A5.1.3.) Under ¶ E2.A5.1.3.1, it may be mitigating where "[t]he information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability." Applicant's history of drug abuse was substantiated by his subsequent detailed admissions and was pertinent to a determination of his judgment, trustworthiness, and reliability. Applicant's falsification of this information raises a security concern. I find this mitigating factor is not raised.

Paragraph E2.A5.1.3.2 of the Directive arises where "the falsification was an isolated incident, was not recent, and the individual subsequently provided correct information voluntarily." The available evidence reveals two instances of false statements in 2004; therefore I conclude this potentially mitigating condition does not apply.

Under ¶ E2.A5.1.3.3 of the Directive, it may be mitigating where, "[t]he individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts." Applicant has not met his burden of proving that he made good-faith efforts to correct the falsification in his statements. Although it appears he provided the investigator additional information during the second interview, the second statement did not include the full extent of Applicant's drug abuse history. I find this potentially mitigating condition does not apply. I also considered carefully the other potentially mitigating conditions and conclude they do not apply.

Guideline F, Financial Considerations

The security concern under Guideline F, Financial Considerations, is that "An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." (Directive ¶ E2.A6.1.1.)

Paragraph E2.A6.1.2.1 of the Directive provides that it may be a disqualifying condition if the evidence reveals "[a] history of not meeting financial obligations." Similarly, ¶ E2.A6.1.2.3 indicates that an "[i]nability or unwillingness to satisfy debts" may be disqualifying. Applicant's credit report reveals unpaid obligations. Applicant explained that these debts were incurred by his wife prior to their divorce, and that he has been unable to locate her. The credit report shows the accounts in question were opened during Applicant's marriage; at least one shows it was a joint account. I conclude the available evidence does not show a history of failing to meet financial obligations or an unwillingness or inability to satisfy debts; therefore, these potentially disqualifying conditions are not raised.

The "Whole Person" Concept

I carefully considered the disqualifying and mitigating conditions in this case, in light of the "whole person" concept. Applicant engaged in a pattern of serious drug abuse between about 1988 and 1993. (Directive, ¶ E2.2.1.1.) It is mitigating that the conduct occurred so long ago, when Applicant was a young man. (Directive, ¶¶ E2.2.1.3, E2.2.1.4.) However, Applicant was convicted of DUI in 1996 and punished for using an illegal drug in 2001, while he was on active duty in the U.S. Army. This not only raised serious questions about his judgment and reliability, but also on his rehabilitation from a pattern of serious substance abuse. Applicant completed a long-term drug rehabilitation program as a teenager, and attended some brief drug and alcohol education courses following his criminal incidents. Significantly,

he had no reported substance abuse problems since his wrongful use of MDMA in 2001, indicating increased maturity and a positive behavioral change. (Directive, ¶ E2.2.1.6.) Most significant, however, was Applicant's deliberate falsifications in his verbal and written statements to the security investigator, wherein he concealed his history of drug abuse. (Directive, ¶¶ E2.2.1.1; E2.2.1.5; E2.2.1.7.) This conduct greatly diminishes Applicant's trustworthiness, reliability and dependability. Considering all the facts and circumstances, I find the alleged financial considerations do not raise security concerns. However, Applicant failed to mitigate the security concerns arising from his history of drug abuse, his criminal conduct, and his personal conduct.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, 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

Subparagraph 1.i: For Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: For Applicant

Paragraph 2, Guideline J: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: Against Applicant

Paragraph 3, Guideline E: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Subparagraph 3.b: Against Applicant

Subparagraph 3.c: Against Applicant

Paragraph 4, Guideline F: FOR APPLICANT

Subparagraph 4.a: For Applicant

Subparagraph 4.b: For Applicant

Subparagraph 4.c: For 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. Clearance is denied.

Michael J. Breslin
Administrative Judge