

DATE: August 22, 2007

_____)	
In Re:)	
)	
-----)	ISCR Case No. 06-25004
SSN:-----)	
)	
Applicant for Security Clearance)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
DARLENE LOKEY ANDERSON**

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

David P. Price, Attorney At Law

SYNOPSIS

The Applicant's history of drug involvement, alcohol abuse, dishonesty and criminal conduct considered in totality have not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

STATEMENT OF THE CASE

On January 30, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 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 clearance should be denied or revoked.

The Applicant responded to the SOR in writing on February 21, 2007, and requested a hearing before a DOHA Administrative Judge. The case was originally assigned to another Administrative Judge on April 5, 2007. The case was reassigned to a second Administrative Judge on April 9, 2007. It was then transferred to the undersigned Administrative Judge on June 14, 2007. A notice of hearing was issued on May 4, 2007, scheduling the hearing for June 19, 2007. At the hearing the Government called one witness and presented two exhibits of which only one was admitted into evidence. The Applicant called three witnesses and presented three exhibits. The Applicant also testified on his own behalf. The record remained open until June 25, 2007, to allow the Applicant to submit additional supporting documentation. The Applicant presented one Post-Hearing exhibit that was admitted into evidence. The official transcript (Tr.) was received on June 27, 2007.

FINDINGS OF FACT

The Applicant is 31 years old and single. He holds a Bachelors of Science degree. He is employed by a defense contractor as an Senior GIS Analyst and Manager, and is applying for a security clearance in connection with his employment.

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

The Appellant was a rebellious teenager. In 1998, while in high school, he started using marijuana on a regular basis since it was commonly used among his friends. His use of marijuana continued into college but became less frequent than in high school and mainly at social gatherings. The Applicant testified that he last used marijuana in about June 1999, around the time he graduated from college. (Tr. p.127). The federal investigator who conducted a personal interview of the Applicant, and who took notes and prepared a report of investigation from his notes, testified concerning his interview of the Applicant. The investigator stated that the Applicant told him that he had actually used marijuana over a greater period of time than he had listed on the application. (Tr. p. 35).

The Applicant testified that he used cocaine in 1998 and/or 1999, during his junior or senior year in college and has not used it since. He also testified that he contributed to a group purchase of cocaine. He explained that his use of cocaine was infrequent and that he could not remember exactly how many times he used it because he was usually consuming alcohol at the time and his memory is very foggy. (Tr. p. 154). When the Applicant was questioned at the hearing as to what

he told the investigator about his cocaine usage, the Applicant stated that he did not recall exactly. (Tr. p. 155).

The federal investigator who interviewed the Applicant testified that the Applicant voluntarily told him that he had used cocaine and that he had purchased it. He also told him that he had not used cocaine that often, but that it had been until fairly recently as opposed to the marijuana usage which was all far in the past. The investigator testified, "That he started using the cocaine or had first used it roughly about the same time, about the time that he had stopped using marijuana and that it had continued up until about 2004." (Tr. pp. 46- 47).

The Applicant admits that he used LSD in 1994 or 1995, during college, and purchased it on at least one occasion. The Applicant contends that he has not used any illegal drugs since graduating from college. (Tr. p. 127). The federal investigator testified that the Applicant told him that he had purchased what he believed was LSD, but he did not know for a fact if it was LSD.

The Applicant was arrested on three occasions for drug related offenses. In September 1991 he was arrested and charged with Possession of Marijuana. He was held overnight and then released to his parents. He received deferred adjudication and was fined less than \$200.00. A month later, he was arrested again for Possession of Marijuana. He was held a few hours and then released. He received a deferred adjudication and was fined less than \$200.00.

In August 1995, the Applicant was detained while attempting to cross the Canadian border. His car was searched by the Canadian police and LSD was discovered in the Applicant's backpack. He was arrested and held in a Canadian jail overnight.

In August 2004, the Applicant was arrested and charged with Possession of Marijuana. He was held overnight and released. He subsequently paid a fine for this offense.

The Applicant indicates that he has no intention of ever using any illegal drug again. (Tr. p. 136).

Paragraph 2 (Guideline G - Alcohol Consumption). The Government alleges that the Applicant is ineligible for clearance because he abuses intoxicants.

The Applicant also abused alcohol, at times to excess and to the point of intoxication from approximately 1993 to at least March 2006.

In September 1994, the Applicant was arrested and charged with Public Intoxication after he was spotted by the police under the influence of alcohol urinating in public. He was held overnight in jail and released. At the time of the offense, the Applicant was in his first semester of college and had been at a party where he had consumed several drinks. He was relieving himself in the parking lot when he was arrested by campus police officers.

Ten years later, the Applicant was arrested on January 31, 2004, and charged with (1) Driving Without Lights On, (2) Driving While Intoxicated, (3) Driving With an Open Container of Beer, and (4) Obstruction of a Highway Passageway. The Applicant was found guilty of Count 4, sentenced to 120 days in jail, suspended, fined \$500.00, court costs of \$239.00 and other fees of \$820.00, ordered to perform 40 hours of community service and was were placed on 16 months of community

supervision/probation. The Applicant explained that he was at a birthday party with some coworkers and had consumed four or five cocktails before driving. He left the gathering and pulled into a gas station to get gas. He turned his lights off and forgot to turn them back on when he left. A police officer pulled him over for not having his lights on and smelled alcohol on his breath. The Applicant was given a field sobriety test and was determined too drunk to drive.

The Applicant generally consumes alcohol on the weekends. (Tr.p. 140). He lives alone and during the week his alcohol consumption is minimal. He enjoys going out with friends on Friday and Saturday nights and having a couple of drinks. He is very cautious and careful about how much alcohol he consumes and how long its been since his last drink. (Tr.p. 141).

Paragraph 3 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

The Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) dated September 19, 2005. Question 24(a) of the application asked the Applicant if since the age of 16 or in the last 7 years, whichever is shorter, has he illegally used any controlled substance. The Applicant answered, "YES" and listed that he used marijuana six times from September 1998 to June 1999. (See Government Exhibit 1). He did not list his cocaine use in any manner or form what so ever. The evidence indicates that he used cocaine from 1998 to at least 2004.

Based upon the evidence presented, I find that the Applicant deliberately falsified his security clearance application when he failed to list his use of cocaine from 1999 to 2004.

Paragraph 4 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in criminal conduct.

The Applicant's deliberate falsifications on his security clearance application, discussed above, are a violation of Title 18 of the United States Code, Section 1001, a felony.

Mitigation.

Three witnesses testified on behalf of the Applicant including his mother, his Manager-Supervisor, who hired him, and a professional associate. They collectively consider the Applicant to be honest, responsible and trustworthy. He is further described as hardworking, down-to-earth and open-minded. He can be relied upon to get the job done at work without problems of any kind. His mother explained that as a teenager, the Applicant experienced some troubling times, but as time passed, he grew out of it and became much more mature. She and her husband are very proud of the Applicant and his accomplishments.

Five letters of recommendation submitted on behalf of the Applicant all attest to his hard working, honest, responsible, pleasant and positive attitude. He is a dedicated employee that demonstrates high quality work and shows outstanding leadership skills. He is respected by his colleagues and professional associates. (See Applicant's Exhibit A and Applicant's Post-Hearing Exhibit).

Several Certificates of Achievement and commendations for successful work completion were submitted on behalf of the Applicant. (See Applicant's Exhibit B).

POLICIES

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Guideline H (Drug Involvement)

24. *The Concern.* Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

Conditions that could raise a security concern:

25.(a) any drug abuse;

25.(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution or possession of drug paraphernalia;

Condition that could mitigate security concerns:

None.

Guideline G (Alcohol Consumption)

21. *The Concern.* Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

Conditions that could raise a security concern:

22. (a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.

22.(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.

Condition that could mitigate security concerns:

None.

Guideline E (Personal Conduct)

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Conditions that could raise a security concern:

16.(a) Deliberate omission, concealment or falsification of relevant 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:

None.

Guideline J (Criminal Conduct)

30. *The Concern.* Criminal activity creates a doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

Conditions that could raise a security concern:

30.(a) a single serious crime or multiple offenses;

30.(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;

Condition that could mitigate security concerns:

None.

_____ 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 general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- 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 criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is “clearly consistent with the national interest” to grant an Applicant’s request for access to classified information.

The DoD Directive states, “The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing 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 determination.” The Administrative Judge can draw only those inferences or conclusions that have 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

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 per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in alcohol abuse, dishonesty and criminal conduct that demonstrates poor judgment or unreliability.

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 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 a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has engaged in drug involvement (Guideline H); alcohol abuse (Guideline G); dishonesty (Guideline E) and criminal conduct (Guideline J). The totality of this evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of

the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guidelines H, G, E and J of the SOR.

Under Guideline H, Drug Involvement, disqualifying conditions, *25(a) any drug abuse and 25(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution or possession of drug paraphernalia* apply. None of the mitigating conditions are applicable.

The Applicant's history of drug involvement involved three drug related arrests, and began in about 1998 with the use and purchase of marijuana, cocaine and LSD and continued until at least 2004. Given the vast discrepancy in the Applicant's testimony at the hearing and the information he provided to the federal investigator during the interview, I cannot find that the Applicant is credible when he states that he stopped using cocaine in 1999. I am more apt to believe that what he told the investigator during his personal interview is more accurate. The investigator has nothing to gain by providing false statements and is sworn to tell the truth at all times. The investigator testified that the Applicant told him that he used cocaine until 2004. Under the particular facts of this case, I really do not know when the Applicant stopped using cocaine, but I believe that he continued to use it beyond 1999, and most probably used it until at least 2004. Furthermore, the Applicant's demeanor during his testimony appeared uncertain, uncomfortable, agitated and nervous. Accordingly, I find against the Applicant under Guideline H, Drug Involvement.

Under Guideline G, Alcohol Consumption, disqualifying conditions, *22(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent and 22(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent* apply. I have considered mitigating condition 23(a), and decide that it does not apply because viewed in its entirety his conduct does cast doubt on his current reliability, trustworthiness and good judgment. Accordingly, none of the mitigating conditions are applicable.

The Applicant admitted that his excessive use of alcohol occurred during the same period that he was abusing drugs. His alcohol abuse also resulted in two alcohol related arrests, the first occurring in 1994, and the second ten years later in 2004. Ironically, his second alcohol related arrest occurred the same year he last used cocaine. He continues to consume alcohol and enjoys going out on the weekends with his friends for cocktails. I do not see a changed pattern of conduct that would guarantee prevention of this sort of abuse in the future. His history of excessive alcohol abuse combined with his illegal drug involvement has not been mitigated by sufficient rehabilitation and reform. Accordingly, Guideline G, Alcohol Consumption is found against the Applicant.

In response to Question 24 on his electronic security clearance application, the Applicant deliberately falsified his security clearance application. There is no reasonable excuse as to why he did not tell the truth about his drug involvement, other than the fact that he wanted to minimize it.

It is obvious that he intentionally concealed this information from the Government, hoping to minimize the seriousness of the matter. In doing so, he has violated Title 18 of the United States Codes, Section 1001, which is a felony. Consequently, his dishonesty with the Government concerning this matter is unacceptable. Under Guideline E, Personal Conduct, disqualifying condition *16(a), deliberate omission, concealment or falsification of relevant 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* applies. Under Criminal Conduct, disqualifying conditions *30(a) a single serious crime or multiple offenses* and *30(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted* apply. The Government relies heavily upon the integrity and honesty of clearance holders. It is a negative factor for security clearance purposes when an Applicant has deliberately provided false information about material aspects of his personal background. None of the mitigating factors set forth in the Directive under Guidelines E or J apply.

I have also considered the “whole person concept” in evaluating the Applicant’s eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole person assessment of questionable judgement, untrustworthiness, unreliability, lack of candor , unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard classified information.

This Applicant has not demonstrated that he is trustworthy, and does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guidelines H (Drug Involvement), G (Alcohol Consumption), E (Personal Conduct) and J (Criminal Conduct).

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1, 2, 3 and 4 of the SOR.

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.
- Subpara. 1.a.: Against the Applicant.
- Subpara. 1.b.: Against the Applicant.
- Subpara. 1.c.: Against the Applicant.
- Subpara. 1.d.: Against the Applicant.
- Subpara. 1.e.: Against the Applicant.
- Subpara. 1.f.: Against the Applicant.
- Subpara. 1.g.: Against the Applicant.
- Subpara. 1.h.: Against the Applicant.

Subpara. 1.i.: Against the Applicant.
Subpara. 1.j.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.
Subpara. 2.b.: Against the Applicant.
Subpara. 2.c.: For the Applicant.
Subpara. 2.d.: Against the Applicant.

Paragraph 3: Against the Applicant.

Subpara. 3.a.: Against the Applicant.

Paragraph 4: Against the Applicant.

Subpara. 4.a.: 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.

Darlene Lokey Anderson
Administrative Judge