



## **MOTION TO AMEND SOR**

The Government made a motion to amend the SOR under allegation 1b to reflect a reference to question 27 instead of question 29 as alleged. The Applicant had no objection to said amendment. The Government's motion was granted and said amendment was made.

## **FINDINGS OF FACT**

The following Findings of Fact are based on the Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 28 years old and single. He is employed by a defense contractor as a Member of the Technical staff and is seeking to maintain a security clearance in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). After a complete and thorough review of the evidence in the record, and upon due consideration of the same, the following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (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 started using marijuana at the age of 19, in 2001, about the same time he began working for a defense contractor. He was hired as a summer intern while pursuing his undergraduate degree. He graduated from college in June 2002, and was offered a full time position by the defense contractor in October 2002.

The Applicant completed a Security Clearance Application (SF-86) dated January 8, 2002. Question 27 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 for example, marijuana, cocaine, crack, cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), hallucinogenic (LSD, PCP, etc.) or prescription drugs. The Applicant answered, "No". The Applicant failed to list that he used marijuana from 1998 to at least 2002. (See Government Exhibit 2). The Applicant subsequently received a Secret level security clearance.

The Applicant explained that he knowingly submitted false information to the Government on his security clearance application because he was scared, it was his first job after college, and he wanted to stay in the city where he lives. (Tr. pp. 45-46). The Applicant justified his use of illegal drugs because he believed that it did not affect his work performance. Even though he knew that his marijuana use was illegal and that it was against company and DoD policy, he continued to use it.

From 2002 through 2004, the Applicant continued to use marijuana while holding a security clearance. From August 2004 through May 2007, the Applicant earned a masters degree in astronautical engineering with a 3.9 GPA, while working full time. Sometime in 2004, the Applicant made a conscious decision to stop using marijuana and/or any other illegal drugs. He became fully focused on his career goals and dedicated to a drug free lifestyle.

The Applicant completed a second Security Clearance Application (SF-86) dated May 12, 2005. This time, he was applying for SCI access. Question 27 of the application asked the Applicant if 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.) hallucinogenic (LSD, PCP, etc.) or prescription drugs. The Applicant answered, 'YES', and listed that he had used marijuana a few times from January 2002 to January 2003. He intentionally understated his use of marijuana. He failed to list the fact that he had used marijuana with varying frequency from at least 1998 to at least September 2004. (See Government Exhibit 1). The Applicant's SCI access was denied in August 2006.

The Applicant stated that he wanted to come clean and reveal the truth about his marijuana use when he filled out the second security clearance application. This time he made a mistake by revealing only the time of his peak use of marijuana 2002 to 2003 instead of revealing all of his use. During a subsequent polygraph examination, the Applicant admitted that he had last used marijuana in September 2004. The Applicant explained that he did not take the security forms as serious as he should have. He felt that they did not define who he was and he now realizes his mistake. He states that he has grown up and understands the importance of being honest and truthful with the Government in answering the questions on his security forms. He states that he now lives a good, honest life and usually keeps integrity at the front of his actions. He is saving money to buy a house, he plans to get engaged this summer, and is pursuing his hobby of building an experimental aircraft in his garage at home. (See Applicant's Answer to SOR).

Based upon the evidence presented, I find that the Applicant deliberately falsified his Security Clearance applications dated January 8, 2002 and May 12, 2005.

Letters of recommendation from the Applicant's supervisor, a Rabbi and friend, and a coworker, attest to the Applicant's fairness, intelligence, good judgment and integrity. He is considered a team player, and a valuable employee. (See Applicant's Exhibit A).

Other letters of commendation awarded to the Applicant reflect his personal contributions and superb technical support and professionalism on the job. (See Applicant's Exhibit B).

The Applicant has received several awards and certificates of appreciation for his exceptional work performance. (See Applicant's Exhibit C).

## **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 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.

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 dishonesty 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 dishonesty (Guideline E). 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 Guideline E of the SOR.

Applicant's conduct under Guideline E, Personal Conduct is very troubling. He was not honest with the Government on two separate security clearance applications concerning his use of marijuana. The first time he completed a security clearance application in 2002, he denied all illegal drug use. He was subsequently granted a security clearance and continued to use marijuana. The second time, in 2005, he admitted drug use but significantly understated it. This time he was not found to be truthful and did not receive Special Compartmented Access (SCI). On both occasions, he deliberately tried to conceal the truth about his illegal drug use. 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. 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 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. The Applicant has been able to fulfill the academic requirements associated with his career quite well. However, he is young and immature and has made a series of poor decisions that adversely effect his ability to obtain a security clearance. He should never have used marijuana in the first place. He should have revealed the truth about his marijuana use on his security clearance applications, and he should not have continued to use marijuana after having been granted a security clearance from the DoD.

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 Guideline E (Personal 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 Paragraph 1 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.

### **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