



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 07-06353
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert E. Coacher, Esq.
For Applicant: *Pro se*

March 18, 2009

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted his most recent Security Clearance Application (SCA), on March 15, 2006. On April 15, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under personal conduct (Guideline E), and criminal conduct (Guideline J). The action was taken pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and made effectively within the Department of Defense for SORs issued on or after September 1, 2006. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted his notarized answer to the SOR on May 11, 2008. He elected to have his case decided on the record in lieu of a hearing. DOHA mailed a File of Relevant Material (FORM, information provided to an applicant to support the

allegations of the SOR) to Applicant on December 30, 2008. He received the FORM on January 5, 2009. His response was due on February 4, 2009. No response was submitted. I was assigned the case on March 3, 2009.

Rulings on Procedure

Subparagraph 2.a. incorrectly identifies subparagraphs 2.a., 2.d., 2.e., and 2.f. to show criminal behavior and/or rules violations. There is only one subparagraph under paragraph 2. Accordingly, the corrected references are subparagraphs 1.a., 1.d., 1.e., and 1.f. as examples of Applicant omitting material information about his drug use from the government during a security investigation. The corrections are made to remedy an administrative oversight, and do not affect the substantive rights of the parties. The SOR shall be amended to conform the SOR to the evidence presented. See, Directive E3.1.17.

Findings of Fact

Applicant is 48 years old. He was married in 1987, and divorced in 2001. He currently is involved in a spouse-like relationship. His security applications (SCAs), Items 4, 5, and 6, show he has been employed as a property administrator with a defense contractor since 1985. He has held a security clearance since February 1987. He seeks a security clearance.

The SOR includes six allegations under the personal conduct guideline, and one allegation under the criminal conduct guideline. Applicant admitted all allegations. In addition to Applicant's admissions, I make the following factual findings.

SOR 1.a. On January 31, 2005, Applicant was interviewed as a part of the special access investigation with another agency of DoD. During this polygraph interview, he was asked if he had used illegal drugs in the last seven years, and his answer was "No." Applicant was re-interviewed using a polygraph the next day. He admitted using marijuana once in June 2004, but denied using the drug at any other time (*Id.*). He furnished false information in his January 31, 2005-interview about using marijuana because he was ashamed, and he did not want to jeopardize his employment and security clearance (Item 7).

SOR 1.b. Applicant's special access application to another agency of DoD was denied on May 3, 2005 (Item 9) because of his drug use in June 2004, when he was being sponsored for special access, and while he held a Top Secret security clearance. Applicant had also signed a DoD policy letter on February 25, 2004 acknowledging that the use of illegal drugs while holding a security clearance was prohibited.

SOR 1.c. Applicant admitted in his sworn statement dated October 25, 2007 (Item 7), that he was aware of his responsibility to report his drug usage in June 2004,

but did not make the disclosure until advised by a representative of another agency of the DoD. Applicant's disclosure of his drug use prompted an adverse information report being filed against him.

SOR 1.d. In Applicant's sworn statement on October 25, 2007, he falsely stated that his marijuana use in June 2004, which he reported in his March 21, 2006 SCA, was the first time he admitted drug use on an SCA. In actuality, he admitted using marijuana on three occasions: (1) in an SCA that he certified and signed on December 2, 1985 (Item 6), he indicated he used marijuana about twice; (2) in a signed sworn statement dated January 24, 1986, Applicant recalled using marijuana about ten times between 1974 and 1976; and, (3) in an SCA dated March 12, 1991, Applicant stated he used marijuana once in the fall of 1976.

SOR 1.e. In Applicant's signed statement of October 25, 2007, he specifically denied using marijuana in the mid-1970s, or in the 1976-1977 time frame. He falsely claimed he used marijuana on only one occasion in June 2004, and at no other time.

SOR 1.f. In his SCA dated March 21, 2006, Applicant deliberately answered "No" to question 32, requiring a truthful response to having had a clearance or access denied. Applicant deliberately failed to disclose his special access application was denied by another agency of DoD in May 2005.

SOR 2.a. The deliberate omissions of information about his marijuana use in subparagraphs 1.a., 1.d., 1.e., and 1.f., constitute a criminal violation of 18 U.S.C. § 1001, a federal law. All factual allegations under SOR 1 and 2 are found against Applicant.

Character Evidence

On December 30, 2008, Applicant was sent a copy of the FORM. In an explanatory statement attached to the FORM, Applicant was advised he had 30 days to reply to the enclosed governmental exhibits, which the government intended to use to substantiate the SOR allegations. Also, he was advised he could object to the exhibits and/or other documents. He was advised he could access the Internet for decisions made by DOHA Administrative Judges for guidance in the presentation of his case. Finally, Applicant was informed in the final paragraph of the December 30 letter to call Department Counsel if he had questions. Other than his admissions in his answer to the SOR on May 11, 2008, Applicant provided no information in response to the FORM.

Items 4 (SCA, March 21, 2006), 5 (SCA, March 12, 1991), and 6 (SCA, December 1985) indicate Applicant has worked for his current employer since July 1985. Sometime in the 1990s, Applicant's position was renamed from "security coordinator" to "property administrator." There is no information in the SCAs or in other locations in the file describing Applicant's job responsibilities. Items 4, 5 and 6 also

provide the names and addresses of seven individuals Applicant described as character references and/or individuals who know him well. Applicant supplied no other information about these individuals, and/or whether they are aware that he deliberately provided false information about his drug use during his security investigation over the years.

Policies

As set forth in Appendix 8 of the Regulation, every recommended personnel security decision must be a fair and impartial, overall commonsense decision based on all available evidence, both favorable and unfavorable. The decision must be arrived at by applying the standard that the grant or continuance of a security clearance or access to classified information must be clearly consistent with the interests of national security.

The objective of the security clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. The adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and various other variables. Each case must be adjudged on its own merits, taking into account all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. No unfavorable personnel security clearance or access determination may be made without granting the individual concerned the procedural benefits set forth in the Regulation. See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access or sensitive information).

In all adjudications, the protection of the national security is the paramount consideration. Therefore, any reasonable doubt concerning personnel being considered for access to classified information must be resolved in favor of national security. In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on speculation or guesswork.

Analysis

Personal Conduct (PC)

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."

This guideline applies to intentional attempts to conceal or omit information from an SCA or an interview or a sworn statement. Whether an omission is intentional or deliberate, depends on the circumstances of each case. Applicant admitted deliberately omitting material information about his marijuana use from a January 2005 interview, an October 2007 sworn statement, and a March 2006 SCA. Applicant's deliberate omissions to all subparagraphs under paragraph 1 completely undermine the believability of his statements describing his marijuana use over the years. His false statements in interviews and sworn statements invoke PC DC 16.b. (*deliberately providing false or misleading information concerning relevant facts to an employer, investigator or other official government representative*). The false information he provided in SCAs activates PC DC 16.a. (*deliberate omission, falsification of relevant facts from any personnel security questionnaire used to determine security clearance eligibility or trustworthiness*).

There are three mitigating conditions (MC) under the PC guideline that are potentially applicable to the circumstances in this case. Those conditions are: PC MC 17.a. (*the individual made prompt, good-faith efforts to correct the omission, concealment or falsification, before being confronted with the facts*); PC MC 17.c. (*the offense was so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*); and, PC MC 17.d. (*the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate stressors, circumstances, or factors that caused untrustworthy, unreliable or other inappropriate behavior, and such behavior is unlikely to recur*). PC MC 17.a. is not applicable as Applicant has not made any effort to provide the full scope of his drug history. Even though he was confronted a second time with a polygraph in January 2005, he furnished an incomplete account of his drug history. He had an additional opportunity to set the record straight by responding to the FORM, and declined. PC MC 17.a. does not apply.

PC MC 17.c. is inapplicable because Applicant's deliberate falsifications were not isolated. Rather, they constituted a pattern of dishonesty dating to at least 1985, that cannot be credibly reconciled as minor. The second element of the condition cannot be applied as the most recent falsification occurred less than 18 months before January 5, 2009, when Applicant received the FORM.

Rehabilitating dishonest behavior begins with accepting full responsibility for one's conduct. The favorable mitigation Applicant receives under the first element of PC MC 17.d. in acknowledging the behavior is reduced by Applicant's decision not to describe the full scope and history of his drug use. Further, PC MC 17.d. calls for additional evidence to be taken into consideration under the condition. Applicant has presented no evidence that demonstrates he has taken positive steps to prevent his drug use from recurring. Without positive action to reduce the chances for drug use in the future, there remains corresponding concerns about the recurrence of Applicant's

drug involvement as well as his vulnerability to pressure and coercion in the future. The PC guideline is found against Applicant.

Criminal Conduct (CC)

30. *The Concern.* “Criminal activity creates 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.” AG ¶ 30

The two disqualifying conditions under the CC guideline applicable to the circumstances of this case are CC DC 31.a. (*a single serious crime or multiple lesser offenses*) and CC DC 31.c. (*allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted*). On several occasions since 1986, Applicant intentionally omitted material information (information the government has a legitimate right to know about to make an informed decision regarding an applicant’s security suitability) about his drug use. Applicant’s intentional omissions between 1991 and October 2007 represent felonious criminal conduct under 18 U.S.C. § 1001.

I have carefully considered the mitigating conditions, however, I conclude that none apply. CC MC 32.a. (*so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness and good judgment*) does not apply since Applicant’s most recent omission occurred less than 18 months ago. Applicant’s decision not to respond to the FORM continues to cast concerns on his judgment and reliability.

CC MC 32.d. (*there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement*) has only limited application. Though Applicant’s October 2007-sworn statement reflects his remorse for lying about his drug use, that remorse did not stop him from continuing to provide false information about his drug history in his October 2007 statement. Though his tenure at his current employer of 23 years infers a good employment record, that inference is tenuous without performance evaluations, character endorsements, and certificates/awards praising his job performance. Applicant’s criminal conduct has not been mitigated.

Whole Person Concept (WPC)

I have examined the evidence under the disqualifying and mitigating conditions of the PC and CC guidelines. I have also weighed the circumstances of this case within the context of nine variables known as the whole person concept:

(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 extent to which the participation was voluntary; (6) the presence or absence of rehabilitation and other permanent 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. AG ¶ 2(a)

In 1985, Applicant was 25 years old, and had just started working for the predecessor of his current employer. He stated in an SCA in December 1985 that he tried marijuana a couple of times. About a month ½ later, he stated he used the drug about 10 times between 1974 and 1976. Yet, in an SCA in 1991, Applicant changed his story (use only in the Fall of 1976) a third time in six years. In January 2005, Applicant provided still a fifth account of using marijuana on only one occasion in June 2004, which he recounted in a sworn statement in October 2007. Though his October 2007 clearly shows his understanding of the reporting requirements for security violations, he has yet to demonstrate the commonsense rule of telling the truth about his drug use. By presenting no evidence of rehabilitation and other behavioral changes, there appears to be a likelihood of continuation or recurrence of his drug use that requires a finding against Applicant under the PC and CC guidelines.

Formal Findings

Paragraph 1 (Personal Conduct, Guideline E): AGAINST APPLICANT

Subparagraph 1.a through 1.f Against Applicant

Paragraph 2 (Criminal Conduct, (Guideline J): AGAINST APPLICANT

Subparagraph 2.a. Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge