



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



In the matter of:)	
)	
)	ISCR Case No. 07-08147
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro se*

May 30, 2008

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 19 October 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E and H.¹ Applicant answered the SOR 16 November 2007, and requested a hearing. DOHA assigned the case to me 19 December 2007, and I convened a hearing 29 January 2008. DOHA received the transcript (Tr.) 6 February 2008.

¹

DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Findings of Fact

Applicant denied the Guideline E allegations, but admitted his March 2004 use of marijuana under Guideline H. He is a 38-year-old security assistant employed by a defense contractor since March 2004. He has not previously held a clearance.

Applicant first completed a clearance application in 2002, when a previous employer required it for informational purposes. That application was never submitted for investigation. When Applicant first applied for an industrial clearance in November 2004 (G.E. 1), he was using a paper copy of the earlier application as he completed the new application electronically, updating entries as he went along.² He deliberately concealed his marijuana use in March 2004 by answering “no” to question 27 (illegal drug use, last seven years). He also deliberately failed to disclose some financial difficulties by answering “no” to question 39 (financial delinquencies, over 90 days). In fact, he had used marijuana in March 2004, while on vacation with old friends, and while employed as a background investigator for a government contractor. He also had three delinquent debts totaling \$615 currently past due.

Applicant denies he intended to withhold this information from the government, but the record belies that claim. When completing his clearance application in 2002, he had answered “yes” to the drug question, and had disclosed marijuana use in high school—use which he was told was beyond the scope of the question. He was aware of the three delinquent debts, but felt justified in omitting them because he had reasons for thinking each of them unjust. He attributed his one-time marijuana use to being with old friends, with whom he felt comfortable, and joining them when the marijuana was offered. He does not intend to use marijuana again.

In March 2004, Applicant was fired from his job as a background investigator for a government contractor for falsifying two investigative reports. The two reports involved employees with temporary appointments (i.e., with expiration dates). In each case, Applicant noted the temporary appointment, but did not record the expiration date of the appointment. He recalls having done so previously without comment, but in this instance, his temporary supervisor returned the reports to him and directed him to obtain the correct information. Applicant concluded that the information was not worth the effort of traveling to the records location, so polled his coworkers about the typical length of a temporary appointment, and made up dates for the two reports. The company considered this to be falsification, and he was fired. Applicant did not contest the firing.

²

For example, he updated his addresses, his employment history, his schooling, his foreign travel, and his marital status—having just married the month before. He reported that he had been fired from his previous job in March 2004 for failing to follow company policy.

Applicant's character references (A.E. A) and employment references (A.E. B), consider him worthy for access to classified information. None appear aware of the issues raised in the SOR.

Policies

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline E (Personal Conduct) and Guideline H (Drug Involvement).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.³

Analysis

The government established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns. He deliberately concealed his illegal drug use and his financial issues from the government.⁴ He did so knowing that these

³ See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴

¶16.(a) deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

issues were of security concern to the government. Further, his falsification of the investigative reports—and more pertinently, his willingness to substitute his own judgment about what level of effort was required—casts serious doubt on his judgment.

None of the Guideline E mitigating conditions apply. The concealed information was relevant to a clearance decision. Applicant's falsifications prohibited the government from evaluating his illegal drug use and financial issues in a timely fashion. Finally, while his eventual disclosures may have been forthright, they cannot be considered prompt.

Applicant's failure to disclose his illegal drug use and financial issues demonstrates a lack of candor required of cleared personnel. The government has an interest in examining all relevant and material adverse information about an Applicant before making a clearance decision. The government relies on applicants to truthfully disclose that adverse information in a timely fashion, not when it is perceived to be prudent or convenient. Further, an applicant's willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the government relies on to perform damage assessments and limit the compromise of classified information. Applicant's conduct suggests he is willing to put his personal needs ahead of legitimate government interests. I resolve Guideline E against Applicant.

The government also established a case for disqualification under Guideline H.⁵ However, Applicant mitigated the security concerns. His one-time use in March 2004 is both distant in time and infrequent.⁶ His abstinence from drug use—now nearly four years—is adequate to demonstrate an intent to refrain from drug use in the future.⁷ I conclude Applicant is unlikely to use illegal drugs in the future. Accordingly, I resolve Guideline H for Applicant.

Formal Findings

Paragraph 1. Guideline E: AGAINST APPLICANT

Subparagraph a: Against Applicant

⁵¶25.(a) any drug abuse. . . ; (c) illegal drug possession, including. . . purchase. . . ; (c) any illegal drug use after being granted a security clearance;

⁶

¶26.(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

⁷¶26.(b). a demonstrated intent not to abuse any drugs in the future, such as; . . . (3) an appropriate period of abstinence;

Subparagraph b: Against Applicant
Subparagraph c: Against Applicant

Paragraph 2. Guideline H: FOR APPLICANT

Subparagraph a: For 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 or continue a security clearance for Applicant. Clearance denied.

JOHN GRATTAN METZ, JR
Administrative Judge