



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-12916
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer I. Goldstein, Department Counsel
For Applicant: *Pro Se*

August 20, 2008

Decision

LOKEY-ANDERSON, Darlene, Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), dated January 15, 2007. On March 6, 2008, 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.

Applicant acknowledged receipt of the SOR on March 17, 2008. He answered the SOR in writing on April 7, 2008, and requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on June 6, 2008. A notice of hearing was issued on June 16, 2008, and the matter was scheduled for hearing on July 8, 2008. The Government called one witness and presented five exhibits, referred to as Government Exhibits 1 through 5, which were received without objection. The Applicant presented three exhibits, referred to as Applicant's Exhibits A through C, which were received without objection. The Applicant also testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on July 18, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 43 years old, married, and did not graduate from high school, but has completed some college courses. He is employed by a defense contractor as a Warehouse Specialist, and is applying for a security clearance in connection with his employment.

Paragraph 1 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in criminal conduct.

The Applicant was arrested, charged and convicted on twelve separate occasions, beginning in 1983 and continuing until at least September 2000, for various criminal violations, nine of which were drug related offenses. He attributes his high risk lifestyle to the fact that he grew up a troubled youth in a rough, poverty stricken neighborhood where drugs and criminal conduct ran rampant. He was in and out of foster care and eventually ended up living on the streets.

In May 1983, he was arrested and charged with Simple Battery. The Applicant got into a fight with a known criminal who hit him with a stick. The Applicant hit him back, while the police were watching the incident. At court, the case was dismissed. In January 1985, he was arrested for Burglary. This case was also dismissed. In January 1988, on the Applicant's birthday, he was arrested and charged with Possession of a Controlled Substance (Cocaine). This charge was later dismissed. Three days later, in January 1988, the Applicant was arrested for Possession of a Controlled Substance, Unlawful Use of a Weapon and Failure to Register a Firearm. In June 1988, he was arrested and charged with Possession of Cocaine. In July 1988, he was arrested again and charged with Possession of a Controlled Substance. In February 1990, he was arrested and charged with Carrying a Concealed Weapon. He pled guilty and was sentenced to one year of supervised probation. In August 1990, he was arrested and charged with Possession of a Controlled Substance with Intent to Deliver. In October 1990, he was arrested and charged with Possession of a Controlled Substance. (Government Exhibit 3)

In July 1991, he was charged with Unlawful Use of a Weapon, Failure to Register a Weapon, and Possession of a Controlled Substance. The Applicant pled guilty and was sentenced to 14 days in jail and one year of probation. (Government Exhibit 3).

In April 1992, he was charged with Possession of Heroin. The charge was later dismissed. (Government Exhibit 3).

In September 2000, he was arrested and charged with Possession of a Controlled Substance (Marijuana/Cocaine). The Applicant explained that he was off work and was sitting in his car "getting high". He was smoking a marijuana cigarette laced with cocaine when the police pulled up and caught him in the act. He was later enrolled in a diversion program for drug abuse and education which he completed in July 2001. (Government Exhibit 3).

Paragraph 2 (Guideline H - Drug Involvement). The Government alleges that the Applicant is ineligible for clearance because he abuses illegal drugs.

The Applicant used a variety of illegal drugs beginning in 1979 at the age of fourteen or fifteen, that continued until at least October 2000, at the age thirty-five.

In 1979, while in high school, he started using marijuana and used it on almost a daily basis. As time passed and as he got older, he often smoked marijuana cigarettes that were laced with cocaine or PCP. He usually smoked it when he got together with friends. He also snorted heroin and cocaine. Although some of his illegal drugs were provided by friends, he also purchased them with money he earned from odd jobs, spending between \$30.00 and \$40.00 a week on the drugs. He has not used heroin or cocaine since 1990.

During his childhood, he described his home life as “messed up”. His mother was an alcoholic, his father was not around. He was one of seven children in his family and was placed into a foster home at ten years of age. When he returned home, they lived among rats and poverty. He and his siblings missed lots of school because they had no clothes or shoes to wear. He found himself rebelling against everything and his way of rebelling was to use drugs.

After his arrest in 2000, in an attempt to straighten out his life and stop using illegal drugs, the Applicant moved his family out of state and across the country. He has not used any illegal drug since he got out of jail following his arrest in September 2000. In July 2001, he completed the court ordered drug diversion program. (See Applicant’s Exhibit B). He indicates that he found the diversion program to be very helpful. His wife has also helped him to stay drug free by keeping track of him and making sure that he is staying on the straight and narrow. He no longer associates with drug users and only surrounds himself with positive people. His main focus is to take care of his family. He also coaches basketball for the local park and recreation center and attends church.

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 a Security Clearance Application dated January 15, 2007. Question 23(a) of the application asked the Applicant if he has ever been charged with or convicted of a felony? The Applicant answered, “No”. (See Government Exhibit 1). The record is not clear as to whether any of the charges set forth under paragraph 1 above are felonies. Accordingly, this allegation is found for the Applicant.

Question 23(b) of the same questionnaire asked the Applicant if he has ever been charged with or convicted of a firearms or explosives offense? The Applicant answered, “No”. (See Government Exhibit 1). This was a false answer. The Applicant failed to list his firearms charges set forth above under paragraph 1.

Question 23(c) of the same questionnaire asked the Applicant if he has ever been charged with or convicted of any offenses related to alcohol or drugs? The Applicant answered, "No". (See Government Exhibit 1). This was a false answer. The Applicant failed to list his drug-related charges set forth above under paragraph 1.

Question 24(a) of the same questionnaire asked the Applicant if since the age of 16 or in the last 7 years, whichever is shorter, he illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc), amphetamines, depressants barbiturates, methaqualone, tranquilizers, etc), hallucinogens, (LSD, PCP, etc.), or prescription drugs?", The Applicant answered, "No". (See Government Exhibit 1). This was a false answer. He failed to disclose his illegal use of drugs in September 2000, when he was arrested for possession of marijuana and cocaine.

The Applicant offered a number of excuses as to why he did not answer the questions truthfully. He explained that he thought that the questions only asked him for matters that may have occurred within the last seven years. (Tr. p. 60). He stated that he conducted a criminal record search and did not come up with anything so he did not reveal his past. He indicated that he did not have specific dates and that is why he did not disclose his arrests. (Tr. p. 64). He stated that he knew that he was going to have an interview with an investigator and that he would reveal the truth then. (Tr. p. 65). With regard to question 23(c), concerning whether he had ever used any illegal drugs, he acknowledges that he should have answered, "YES". He does not know why he did not answer the question truthfully. (Tr. p. 61)

Based upon the evidence presented, I find that the Applicant deliberately falsified his Security Clearance Application dated January 15, 2007. The Applicant's deliberate falsifications in his security clearance application, are violations of Title 18 of the United States Code, Section 1001, a felony.

Paragraph 4 (Guideline F - Financial Considerations) The Government alleges that the Applicant is ineligible for a security clearance because he is financially overextended and at risk to engage in illegal acts to generate funds.

The Applicant was indebted to a County for delinquent child support in the amount of \$17,044.79. As of January 15, 2007, this debt had not been paid. The Applicant settled this agreement with the County Child Support Services Department and entered into an agreement with the mother of his child to pay her \$450.00 monthly which he has been doing. (Applicant's Exhibit A).

Letters of recommendation from the Applicant's coworkers and friends attest to the fact that the Applicant is a valuable asset to the company. He is considered to be a hard working, enthusiastic, honest, responsible and trustworthy. (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 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:

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

31.(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.

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:

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.

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 F (Financial Considerations)

18. *The Concern.* Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

Conditions that could raise a security concern:

19.(a) inability or unwillingness to satisfy debts;

19.(c) a history of not meeting financial obligations.

Conditions that could mitigate security concerns:

20.(d) the person initiated a good faith effort to repay overdue creditors or otherwise resolve debts.

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 criminal conduct, drug abuse, dishonesty and financial problems 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 criminal conduct (Guideline J), drug involvement (Guideline H), dishonesty (Guideline E), and financial irresponsibility (Guideline F). 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 J and E of the SOR.

Under Guideline J, Criminal Conduct, disqualifying conditions, *31.(a) a single serious crime or multiple offenses* and *31.(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted* apply. The Applicant has a twenty year history of criminal conduct that includes twelve arrests. Although his most recent arrest occurred in 2000, almost eight years ago, he has recently lied a number of times in response to different questions about his criminal record on his Security Clearance Application. By doing so, he committed violations of Title 18, United States Code, Section 1001. This will be discussed further under Guideline E, below.

Under Guideline H, Drug Involvement, disqualifying conditions, *25.(a) any drug abuse, 25.(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution or possession of drug paraphernalia, and 22.(g) any illegal drug use after being granted a security clearance* apply. However, mitigating condition *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* also applies. Applicant's last use of any illegal drug, be it marijuana, PCP, heroin or cocaine, last occurred in 2000, eight years ago. His last use of illegal drugs occurred far in the distant past and there is no evidence in the record to indicate otherwise. He has made drastic changes in his life to improve it and I do not find his past use of illegal drugs to be recent or of security significance. Accordingly, I find for the Applicant under Guideline H, Drug Involvement.

Applicant's conduct under Guideline E, Personal Conduct is very troubling. He has not been honest with the Government in answering questions about his arrest history and his most recent illegal drug involvement. He deliberately tried to conceal the truth. So much inconsistency confirms to the Government that the Applicant's credibility is a security concern. There is no reasonable excuse as to why he did not tell the truth about his criminal history, 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. 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 or J apply.

The evidence shows that the Applicant fell behind on his child support payments but that he has settled the matter with the County Child Support Services Department and he has negotiated with the mother of his child to pay her \$450.00 a month to satisfy this requirement. Under Guideline F (Financial Considerations), Disqualifying Conditions *19.(a) inability or unwillingness to satisfy debts*, and *19.(c) a history of not meeting financial obligations* are applicable. Mitigating Condition *20.(d) the person initiated a good faith effort to repay overdue creditors or otherwise resolve debts* also applies. His financial problems have been resolved. Accordingly, I find for the Applicant under Guideline F, Financial Considerations.

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 J (Criminal Conduct) and 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 Paragraphs 1 and 3 of the SOR. Paragraphs 2 and 4 are found for the Applicant.

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.
- Subpara. 1.k.: Against the Applicant.
- Subpara. 1.l.: Against the Applicant.

Paragraph 2: For the Applicant.

- Subpara. 2.a.: For the Applicant.
- Subpara. 2.b.: For the Applicant.

Paragraph 3: Against the Applicant.

- Subpara. 3.a.: For the Applicant.
- Subpara. 3.b.: Against the Applicant.
- Subpara. 3.c.: Against the Applicant.
- Subpara. 3.d.: Against the Applicant.

Paragraph 4: For the Applicant.

- Subpara. 4.a.: For 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