



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-15660
SSN:-----)
)
Applicant for Security Clearance)

Appearances

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

November 18, 2008

Decision

TESTAN, Joseph, Administrative Judge:

On June 23, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to applicant detailing the security concerns under Guidelines J, E, G and H. The action was taken under 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 effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on July 16, 2008, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on August 19, 2008. Applicant filed a response to the FORM on September 4, 2008. The case was assigned to me on October 21, 2008. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 51 year old employee of a defense contractor.

In 1996, applicant was fired from job as a lab technician because of excessive absenteeism and tardiness.

In 2000, applicant left his employment after being warned in writing about excessive absenteeism and tardiness.

In 2001, applicant was fired from his defense contractor job, and his security clearance was revoked, after admitting during an investigation that he may have left an object inside a satellite while working on a space launch program.

In 2002, applicant went to an emergency room of a hospital complaining of depression and insomnia. He was evaluated for auditory and visual hallucinations. During his intake examination, he admitted that he had used cocaine and abused alcohol three days earlier.

In November 2005, applicant was arrested and charged with Driving Under the Influence of Alcohol (DUI). He was convicted of the charge, fined, and ordered to enroll in an alcohol counseling program. In response to interrogatories sent to him by DOHA in December 2007, applicant stated he attended six weeks of counseling and eight AA meetings as a result of the court's order. He further stated that he was last intoxicated in November 2005, he last consumed alcohol in December 2007 at a wedding, and he does not intend to consume alcohol anymore.

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) in August 2005. In response to Question 24, applicant denied any illegal drug use during the previous seven years. This response was false because, as noted above, he had used cocaine in 2002.

Policies

The President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information." (*Department of the Navy v. Egan*, 484 U.S. 518,527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." (Exec. Ord. 10865, Section 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, Paragraph E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, Paragraph E3. 1.15.) An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).) “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (Directive, Paragraph E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, Section 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

Analysis

Guideline J, Criminal Conduct

The security concern for criminal conduct is set forth in Paragraph 30 of the AG, and is as follows:

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.

Paragraph 31 describes conditions that could raise a security concern and may be disqualifying: Under Paragraph 31.a., “a single serious crime or multiple lesser offenses” may be disqualifying. And, under Paragraph 31.c., an “allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted,” may be disqualifying. Applicant’s DUI conviction and intentional misrepresentation of material facts on the 2005 e-QIP (a felony under 18 U.S.C. 1001) raise these two disqualifying conditions.

Paragraph 32 of the AG sets forth conditions that could mitigate security concerns. I have considered each of them and conclude none apply.

Guideline H: Drug Involvement

The security concern for drug involvement is set forth in Paragraph 24 of the AG, and is as follows:

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.

Paragraph 25 describes conditions that could raise a security concern and may be disqualifying. Under Paragraph 25.a., “any drug abuse” may be disqualifying. Applicant’s cocaine use raises this disqualifying condition.

Paragraph 26 of the AG sets forth conditions that could mitigate security concerns. Under Paragraph 26.a., it may be mitigating if “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.” Applicant’s isolated incident of cocaine use occurred over five years ago when he was depressed over losing his job. This mitigating condition is applicable.

Guideline G: Alcohol Consumption

The security concern for alcohol consumption is set forth in Paragraph 21 of the AG, and is as follows:

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.

The AG note several conditions that could raise a security concern. Under Paragraph 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,” may be disqualifying. Applicant’s DUI conviction and abuse of alcohol immediately prior to his 2002 visit to the hospital emergency room require application of this disqualifying condition.

Paragraph 23 of the AG sets out potentially mitigating conditions. Under Paragraph 23.a., it may be mitigating if “so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.” It has been over five years since the emergency room visit, and almost three years since applicant’s DUI arrest, and there is no evidence he has consumed alcohol to excess since November 2005. This mitigation condition is applicable.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set forth in Paragraph 15 of the AG, and is as follows:

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.

Paragraph 16 describes conditions that could raise a security concern and may be disqualifying. Under Paragraph 16.a., the “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,” may be disqualifying. This disqualifying condition is applicable because applicant intentionally provided false material information on the e-QIP. Under Paragraph 16.c., “credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information,” may be disqualifying. Applicant’s poor job history, use of cocaine, DUI conviction, and falsification of the e-QIP raise this disqualifying condition.

Paragraph 17 sets forth conditions that could mitigate security concerns. I considered each of them and conclude none apply.

“Whole Person” Analysis

Under the whole person concept, the AJ must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all the circumstances. An AJ should consider the nine adjudicative process factors listed at AG Paragraph 2(a): “(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) extent to which participation is 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.” Under AG Paragraph 2c, the ultimate determination of whether to grant a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature man with a history of employment difficulties, alcohol abuse, illegal drug use, and dishonesty. Although his statements in response to the SOR and FORM indicate that he accepts responsibility for his actions and has started to straighten out his life, these uncorroborated statements of reform cannot be given much weight in view of his intentional falsification of material facts on the e-QIP. Applicant failed to mitigate the security concerns arising from the four guidelines.

Formal Findings

Formal findings for or against applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline J: AGAINST APPLICANT
Paragraph 2, Guideline E: AGAINST APPLICANT
Paragraph 3, Guideline G: AGAINST APPLICANT
Paragraph 4, Guideline H: AGAINST APPLICANT

Conclusion

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

JOSEPH TESTAN
Administrative Judge