



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-16009
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer I. Goldstein, Esquire, Department Counsel
 For Applicant: Brian Cruz, Esquire
 McKenna Long & Aldridge

June 23, 2008

Decision

LOKEY-ANDERSON, Darlene, Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), dated June 15, 2007. On February 18, 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.

The Applicant responded to the SOR in writing on March 26, 2008, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on April 29, 2008. A notice of hearing was issued on May 12, 2008, scheduling the hearing for June 9, 2008. At the hearing the Government presented two exhibits. The Applicant presented fifteen exhibits and testified on his own behalf. The official transcript (Tr.) was received on June 18, 2008.

FINDINGS OF FACT

The Applicant is 25 years old and engaged to be married. He has a Bachelors Degree in Engineering. He is employed by a defense contractor as a Payload Systems Engineer, and is applying for a security clearance in connection with his employment.

Paragraph 1 (Guideline H - Drug Involvement). The Government alleges that the Applicant is ineligible for clearance because he abuses illegal drugs.

The Applicant admitted that he has used marijuana less than 25 times between August 2003 through May 2007. (Government Exhibit 1). He has never purchased or sold marijuana or used any other illegal drug. (Tr. p. 25). In his answers to interrogatories dated January 8, 2008, he indicated that he has used marijuana at least 20 times. (Government Exhibit 2).

The Applicant was Valedictorian of his high school and then attended a prestigious University where he graduated with a GPA of 3.667. He explained that he first used marijuana in 2003, while attending college, and while studying abroad in Ireland for a year. He met some Irish citizens who offered it to him, and he used it with them at social gatherings. When he returned from Ireland to the United States in 2004, he continued to use marijuana on a couple of occasions, again at a party or social event where a friend, or friend of a friend, offered him marijuana. (Tr. p. 24). He last used marijuana at his going away party in May 2007, when it was offered to him, even though he knew at the time that he was going to be working for a defense contractor that prohibited illegal drug use. The Applicant attributes his use of marijuana as an aberration, a serious lapse in judgement, and a stupid mistake that will never happen again.

Since moving to a new state to start his job with the defense contractor, the Applicant has made new friends who do not use illegal drugs, and is involved in a more active lifestyle. He no longer associates with anyone that uses illegal drugs. He shares a home, that he is renting, together with three other engineers from his company who hold security clearances and do not use illegal drugs. He is currently engaged to be married, and his fiancé does not use any illegal drugs of any sort. He admits that he now has a "fantastic job" and a "beautiful fiancé" that he will not jeopardize under any circumstances. For investment purposes, he has purchased a house in another state that he is renting to tenants. He regrets using marijuana in the past and indicates that he will never use any illegal drugs again.

He understands the law and DoD policy that prohibits the use of any illegal drugs. He understands that holding a security clearance is a privilege and not a right. He realizes that he has worked too hard establishing his career and does not ever want to do anything to jeopardize it. He has now committed himself to a drug free lifestyle.

Five letters of recommendation submitted by various individuals who know the Applicant, including his supervisor, coworkers and friends, collectively reflect that the

Applicant is intelligent, responsible, conscientious, organized, and thorough. He is considered to be a person who upholds the values of leadership, integrity, loyalty, and dependability. He always produces quality work. He has regularly handled proprietary documentation as part of his job and has never mishandled the information in any way. He is said to have a high respect for company rules, procedures and standards. The Applicant is held in such high esteem by the company that he was chosen to represent the company at recruiting events. (Applicant's Exhibits A through E).

Applicant's performance appraisal for 2007 reflects that he either "meets" or "exceeds expectations" in every category. (Applicant's Exhibit F).

The Applicant has received a number of achievement awards from his company, which were received November 1, 2007, December 3, 2007, December 11, 2007, March 27, 2008 and most recently on May 17, 2008. (Applicant's Exhibits G through K).

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 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.

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 th his performance evaluation reflects that he is a valuable asset to his company e 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 drug abuse 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 drug involvement (Guideline H). 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 introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guideline H of the SOR.

Under Guideline H, Drug Involvement, disqualifying conditions, *25(a) any drug abuse*, and *25(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution or possession of drug paraphernalia*, 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 history of marijuana use started in college and continued until 2007, until he became employed in his field of study, that of an Engineer. Applicant's last use of marijuana occurred in 2007, just over a year ago. His illegal drug use of the past was obviously an aberration given his outstanding academic achievements and his favorable work performance. Since starting to work for the DoD, he has matured and understands the responsibilities involved in holding a security clearance. He is trusted by his supervisor and coworkers on the job, and is currently living with three engineers from the company who all hold security clearances and do not tolerate drug use of any kind. He admits his mistakes of the past and realizes that it can never happen again. He credibly testified that he has no intentions of ever using any illegal drug in the future.

I have also considered the "whole person" concept by considering the totality of the Applicant's conduct and all of the circumstances, using the nine adjudicative process factors listed above. The Applicant is a young, intelligent individual who displayed poor judgment in the past. Over the past year, he has grown up, matured, and realizes his mistakes. He is now a home owner, is engaged to be married, and understands the responsibilities that go along with it. His performance evaluation

reflects that he is a valuable asset to his company. He understands the privilege and seriousness of holding a security clearance and will do nothing to jeopardize it. Under the particular facts of this case, I do not find his past use of marijuana to be recent or of security significance (factor A(3)), and that the likelihood of recurrence is close to nil (factor A(8)).

This Applicant has demonstrated that he is trustworthy, and that he meets the eligibility requirements for access to classified information. Accordingly, I find for the Applicant under Guideline H (Drug Involvement).

On balance, it is concluded that the Applicant has overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding for 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: For the Applicant.

Subpara. 1.a.: For the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge