



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 07-16995
 SSN:)
)
 Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

August 28, 2008

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted his most recent Security Clearance Application (SCA), on April 16, 2007. On February 14, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under drug involvement (Guideline H), criminal conduct (Guideline J), and personal conduct (Guideline E). 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 effective 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's answer to the SOR was undated, and had no time stamp of receipt by DOHA. The answer was notarized by a notary public whose commission expires on November 12, 2010. Applicant 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 June 18, 2008. He received the FORM on June 24, 2008. His response was due on July 4, 2008. No response was submitted. I was assigned the case on August 15, 2008.

Findings of Fact

The SOR alleges drug involvement, criminal conduct, and personal conduct. Applicant admitted all allegations of the SOR. He has been married since March 2003, and has one 6-year-old child. He graduated from a state university in December 2005 with a Bachelor's degree in Computer Engineering. He seeks a secret clearance.

Drug Involvement

The first paragraph of the SOR describes Applicant's drug involvement which he disclosed in his Security Clearance Questionnaire (SCA) dated April 4, 2007, and his answers to interrogatories he furnished on January 11, 2008.

◆ 1.a. Though he described his cocaine use in Item 6 (answers to interrogatories) as occurring "off and on" during weekends until 2005, in Item 4 (SCA dated April 16, 2007), he stated that:

once I moved to [college town] and quit doing ecstasy, I liked this (cocaine) more and more to keep me up all night. I hate it in the morning and kept thinking I would quit. But because I began to drink so heavily in college many times when I would drink too much I would end up doing this if I had the chance. Again I never let this mess up my school or my other responsibilities, but it was just another example of my being lost at the time.

◆ 1.b., 1.c. Since Applicant described his LSD and mushroom use in Items 4 and 6, the two drugs shall be addressed together in these factual findings. He described his sporadic use of the two drugs as occurring between August 1998 and August 2003. He did not use these drugs much because he did not like the effect, and he had some bad experiences with the drugs.

◆ 1.d., 1.e. Applicant's use of marijuana began in May 1998, and ended in August 1998. He stopped using the drug when peer pressure steered him to more serious drugs.

◆ 1.f., 1.g. Applicant used ecstasy on many weekends between August 1998 and June 2000. He purchased the drug for his friends. Concerning the frequency of use, Applicant stated:

Once I tried it I wanted to do it whenever we got the chance. The more I did it the more "popular" I got and that me want to do it even more. I eventually became the person that would get it for my growing group of

friends and I. Even though I never went far enough to mess up my school I was lost and I became more and more identified with my new “lifestyle” that for the first time provided me with a lot of “cool” friends and girls. (Item 4)

◆ 1.h. Applicant used drugs in June 2004 while holding a security clearance, and working for one of military branches of government. See, Item 4., Section 26.

Regarding his efforts to try to fool the government about his use, Applicant stated:

Before my being saved in the church I had no problem being dishonest when it was to my benefit. I thought I could hide my drug use to get a co-op (college internship with the government), but when the polygraph showed I was being dishonest I just tried to give half-truths. I am now being complet(e)ly open and honest because it is by God’s grace that I even have this opportunity. (Item 6)

Criminal Conduct

Applicant used cocaine after being granted a security clearance in June 2004.

Personal Conduct

Applicant signed an SCA on May 12, 2003, certifying that all entries on the security form were true to the best of his knowledge, and made in good faith. Applicant answered “No” to question 27, requiring information regarding any drug use since the age of 16 or in the last 7 years. He intentionally omitted all his drug use, including use of cocaine, marijuana, ecstasy, LSD, and mushrooms.

Character Evidence

Applicant provided no independent evidence regarding his job performance or his lifestyle. He stated that after moving to the local area in about December 2005, he attended church with his child and had a religious awakening. He stopped using all drugs and alcohol. He and his family have become an integral part of their church. He operates a tutorial ministry at his church while volunteering for projects to help the homeless and those less fortunate. He has continually tried to convince others to quit all drug use.

Policies

When evaluating an applicant’s suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list

potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2b. requires that "[a]ny doubt concerning personnel being considered for access to classified information will 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 mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Drug involvement (DI)

The scope and frequency of Applicant's drug use is captured in DI disqualifying condition (DC) 25.a. (*any drug abuse*); DI DC 25.c. (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia*), and DI DC 25.g. (*any illegal drug use after being granted a security clearance*). Applicant's interview in August 2007 (Item 6) about his drug use paints a picture of only weekend cocaine use. Yet, he uses words and phrases in his SCA (Item 4) that must be interpreted as cocaine use on more than a weekend basis, but rather, to

addictive frequencies. His remarks about the drug indicate he enjoyed using the drug so he could stay awake all night, even though he was repulsed by the resulting hangover the next morning. Moreover, he used the cocaine to moderate the after effects of his excessive alcohol abuse. Considering the frequency and five-year-period of time he used cocaine, his supposed efforts to quit cannot be given much weight, especially because of his intentional omission of his drug use in May 2003 when he submitted his SCA, and after June 2004 when he continued to use cocaine after he was awarded a security clearance.

I have carefully considered the mitigating conditions that lessen or eliminate security concerns of drug use. Significantly, the conditions include additional factors beyond simply the passage of time. Even though Applicant stresses that he discontinued his drug use after moving to the local area in December 2005, his intentional falsification of drug use combined with the scope and period of drug use is not mitigated by DI MC 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*). His seven-year drug history, characterized by cocaine use to soften the effects of excessive use of alcohol, did not end until October 2005.

Applicant's drug use for seven years, and his efforts to keep his drug use from the government are not excused by any of the factors listed under DI MC 26.b. [(1) *disassociation from drug-using associates; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation*]. Because of the length of Applicant's drug use, his decision to try to conceal his drug use in May 2003 and continued drug use for about a year and a half after he received his security clearance in June 2004, a longer period of abstinence is required.

DI MC 26.c. (*abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended*) does not apply, but DI MC 26.d. (*satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional*) does. Based on the extent of Applicant's overall drug use, and his attempt to conceal his use, some kind of treatment, or corroborative evidence from members of Applicant's church, or a favorable prognosis from a qualified medical professional is needed to demonstrate Applicant has overcome his drug involvement. The DI guideline is resolved against Applicant.

Criminal Conduct (CC)

Criminal behavior creates doubt about a person's attitude toward laws, rules and regulations. Applicant's drug abuse from 1998 to at least October 2005 was illegal. The scope and frequency of his drug use, although the most abuse occurring while he was in college, is exacerbated by the fact that his use did not stop with marijuana, but

extended to more serious drugs, including ecstasy, LSD, and cocaine. Though Applicant admitted his drug use, his admission came after he tried to hide his drug use entirely. CC DC 30.a. (*a single crime or multiple lesser offenses*) and CC DC 30.c. (*allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted*) apply.

One mitigating condition that is potentially relevant to this case is CC MC 32.a. (*so much time has elapsed since the criminal behavior happened, or it happened under unusual circumstances that are unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*). Though about three years have passed since his drug use, he was seriously involved with drugs for more than seven years. 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*) recognizes Applicant's remorse for lying to the government in May 2003. However, given the seriousness of his drug abuse, the lack of independent evidence of Applicant's job performance and religious works, I find the CC guideline against Applicant.

Personal Conduct (PC)

The primary concern of this guideline is the demonstration of dishonesty during the security investigation. By answering "No" to the drug question in May 2003, Applicant was deliberately trying to give the government the impression he had never used drugs before that date. Clearly he did not want the government to know about the severity of his drug use and abuse. Applicant's deliberate omission of his drug use in May 2003 falls within PC DC 16.a. (*deliberate omission or falsification of relevant facts from a personnel security questionnaire or similar form used to conduct investigations or award benefits or status*).

None of the mitigating conditions apply. PC MC 17.a. (*the individual made prompt, good-faith efforts to correct the omission before being confronted with the facts*) does not apply as Applicant was contacted in August 2007 to discuss his drug use. PC MC 17.b. (*the refusal or failure to cooperate was caused or contributed to by improper or inadequate advice or authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process*) does not apply as I believe Applicant withheld the truth to advance his own interests, which were to improve his chances of getting employment.

PC MC 17.c. (*the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*) may apply when the offense is insignificant, or not material to the government's decision-making process of determining security suitability. For example, omitting experimental drug use that hypothetically occurred more than 10 years ago may be excused under PC MC 17.c. But omitting a seven-year history of regular use of

serious drugs remains a serious security concern that is not mitigated by the mere passage of time. Applicant disclosed nothing in his May 2003 security form. He did not disclose his drug use until the government confronted him in August 2007.

The only other mitigating condition available on these facts is 17.d. (*the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur*). While Applicant has recognized his falsehoods, there is no independent evidence to mitigate his deliberate omission of his drug use, or his past habit of lying to suit his self interest. The PC guideline is found against Applicant.

Whole Person Concept (WPC)

The AG indicates 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 whole person concept. The WPC is made of nine general policy factors:

- (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 is voluntary;
- (6) the presence or absence of rehabilitation and other 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.

At the age of 21 (May 2003), Applicant deliberately omitted material information from his SCA. The government had a legitimate right to know about his drug history to make an informed decision concerning his security worthiness. Instead of coming forward with the adverse information, he decided to remain silent about his drug use to enhance his chances of receiving a security clearance. He received a security clearance in June 2004, and continued to use cocaine at regular levels as he had done after submitting his certified SCA in May 2003. Even if Applicant quit using all drugs in October 2005 as he claims, his uncorroborated religious awakening in (circa) December 2005 does not satisfy his ultimate burden of persuasion under the DI, CC, and PC 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 (Drug Involvement, Guideline H): AGAINST APPLICANT

Subparagraph 1.a.	Against Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	Against Applicant
Subparagraph 1.d.	Against Applicant
Subparagraph 1.e.	Against Applicant
Subparagraph 1.f.	Against Applicant
Subparagraph 1.g.	Against Applicant
Subparagraph 1.h.	Against Applicant

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

Subparagraph 2.a.	Against Applicant
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Paragraph 3 (Personal Conduct, Guideline E): AGAINST APPLICANT

Subparagraph 3.a.	Against Applicant
Subparagraph 3.b.	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.

Paul J. Mason
Administrative Judge