



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 08-00050  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Department Counsel  
For Applicant: *Pro Se*

November 19, 2008

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing, (e-QIP) on September 20, 2007. On May 29, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines H and E for Applicant. 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 August 25, 2008, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on September 23, 2008. A notice of hearing was issued on September 30, 2008, scheduling the hearing for October 29, 2008. The Government offered two exhibits, referred to as Government Exhibits 1 and 2, which were received without objection. Applicant offered three exhibits, referred to Applicant's Exhibits A through C and testified on his own behalf. The transcript of the hearing (Tr.) was received on November 10, 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 58 years old and has a Bachelors of Science Degree in Aeronautical Engineering. He is employed by a defense contractor and holds dual positions as a Deputy Chief Engineering and Air Frame Chief 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 has been employed in the defense industry since 1973. He has worked for the same defense contractor, and has held a security clearance for the past thirty-five years. Although he was aware of the illegality of marijuana and that his company policy and DoD prohibits its use, he began using marijuana in 1996, and continued to use it on an occasional basis, at times, two to three times per year until 2007. His employer is unaware of his marijuana use.

Applicant explained that he started using marijuana in the mid 90's when he was going through a difficult period in his life; he separated from his wife, and they eventually divorced. During this period, he re-entered the singles scene and associated with individuals who introduced him to marijuana use. Most of the time, he used it at social events with his friends, even though he stated that he did not really enjoy it. His most recent use of marijuana, however, occurred in his home, when old friends came to visit and offered it to him.

In November 2007, the Applicant met with an investigator from the Department of Defense, and stated that he intended to use marijuana in the future and did not see anything wrong with its use. (Government Exhibit 2). In his answer to the Statement of Reasons, he stated, "I overstated what I meant. A better choice of words would have been that I could never say that I would never use marijuana again. I don't plan on using it again, but one never knows." Now, he indicates that he still did not properly articulate his intent. (Tr. p. 42). He states that he does not plan on using marijuana in the future, as he now has a different circle of friends. (Tr. p. 44).

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he intentionally falsified material aspects of her personal background during the clearance screening process.

The Government amended the SOR at the hearing to include Guideline E and the following allegation: The Applicant intentionally falsified his Electronic Questionnaire for Investigations Processing when he answered question 24(b). Question 24 (b) asked, "Have you ever illegally used a controlled substance while employed as a law enforcement officer, prosecutor or court official, while possessing a security clearance, while in a position directly or immediately affecting the public safety?" (Tr. pp. 50 -51). The Applicant answered, "NO". (Government Exhibit 1).

This was a false answer. Applicant testified that he read the question incorrectly, and that he should have answered, "YES". (Tr. p. 51). I find that the Applicant did not intentionally try to conceal his marijuana use from the Government on this

questionnaire. It was the Applicant, himself, who informed the government of his illicit drug use when interviewed two months later. Therefore, I do not find that he deliberately concealed this information on the application, but was only careless in answering the question on the questionnaire. Accordingly, I find for the Applicant under this guideline.

Letters of recommendation from the Director of Engineering and Chief Engineer; and the Chief Engineer and Engineering Business Area Director, both individuals who are professional colleagues and friends of the Applicant, attest to the Applicant's valuable expertise and experience in aerospace engineering and technical design. From their experiences with him, which include many social activities outside of work in addition to daily contact at the company, he has always conducted himself ethically and consistent with company values and behaviors and has consistently demonstrated responsibility and the commitment to protect and safeguard classified information. He is said to be conscientious, trustworthy and strives to do what is right regardless of the situation. They consider him to be extremely logical and level headed. He is well respected and known as a top performer for the company. (Applicant's Exhibit B). Applicant testified that he told them about his drug use. (Tr. p. 30).

Annual performance appraisals of the Applicant from 1997 through 2007 range from "commendable" to "outstanding" in every category. Written comments further indicate that the Applicant has consistently performed in an outstanding manner. (Applicant's Exhibit A).

The Applicant regrets his marijuana use in the past and hopes to retain his security clearance. He enjoys his job, his colleagues, and being a mentor to the young engineers.

## 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;

22.(g) any illegal drug use after being granted a security clearance.

Condition that could mitigate security concerns:

None.

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.

Condition that could raise a security concern:

None.

Condition that could mitigate security concerns:

None.

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 drug abuse and/or dishonesty 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.

The evidence shows that the Applicant used marijuana while holding a DoD security clearance and when questioned about his future use of marijuana, found it difficult to state that he would not use it in the future. Although he now states that he has no intentions of using it in the future, I am not certain that he will remain drug free. He used marijuana knowing that it was prohibited by law and clearly prohibited by the Department of Defense. This demonstrates poor judgment and untrustworthiness. The Applicant is not currently eligible for a security clearance. If he can continue to remain

drug free in the future, he may be eligible for a security clearance sometime in the future, but not now. His recent use of marijuana in 2007, absolutely prohibits a favorable determination in this case.

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. None of the mitigating conditions are applicable. I find his past use of illegal drugs to be recent and of security significance. Accordingly, I find against the Applicant under Guideline H, Drug Involvement.

Under Guideline E, Personal Conduct, as stated above, I find that the Applicant did not deliberately falsify his security clearance application. None of the disqualifying conditions are applicable in this case. Consequently, I find for the Applicant under Guideline E, Personal Conduct.

I have also considered the "whole person concept" in evaluating the Applicant's eligibility for access to classified information. The Applicant is 58 years old, mature, educated, intelligent, successful, well respected, and a long time employee of the defense industry who has held a security clearance for thirty-five years. He has used marijuana, admittedly on an occasional basis, but during eleven of those thirty-five years while holding a security clearance. He last used marijuana in September 2007, and now states that he has no intentions of using it in the future. 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 poor judgement, untrustworthiness, unreliability, a lack of candor, an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

This Applicant has demonstrated that he is not trustworthy, and does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline H (Drug Involvement). Guideline E (Personal Conduct) is found for the Applicant.

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 Paragraph 1 of the SOR. Paragraph 2 is 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.

Paragraph 2: For the Applicant.

Subpara. 2.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