



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



In the matter of:)
)
-----) ISCR Case No. 08-01829
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

November 25, 2008

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Security Clearance Application on March 15, 2007. (Government Exhibit 1). On July 25, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline 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 7, 2008, and requested a hearing before an Administrative Judge. This Administrative Judge was assigned the matter on October 2, 2008. A notice of hearing was issued on October 8, 2008, scheduling the hearing for November 12, 2008. The Government offered ten exhibits referred to as Government Exhibits 1 through 10, which were received without objection. Applicant testified on his own behalf and submitted three exhibits, referred to as Applicant's Exhibits A through C. DOHA received the transcript of the hearing (Tr.) on November 20, 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 34 years old and has a high school diploma and an Associates Degree in Electronics Engineering. He is employed by a defense contractor as a Production Engineering Support Technician and is seeking a security clearance in connection with his employment.

Paragraph 1 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because of his questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that can raise questions about his reliability, trustworthiness and ability to protect classified information.

The Applicant was on active duty in the United States Army from September 1992 until January 1995. He then served in the National Guard from January 1995 until February 1997.

The Applicant admitted all of the allegations under this guideline, except allegation 1(b), in part. Applicant started working for his current employer in 1997. He received a DoD security clearance in March 1998 and held it until March 2008. At that time his security clearance was suspended.

On March 13 or 14, 2005, while holding a DoD security clearance, the Applicant used methamphetamine that he purchased for \$15.00 or \$20.00 from a drug dealer on the street. He used some of it and saved some of it in his vehicle. The following day, on March 15, 2005, the Applicant was stopped by the police for having expired car license tags. During the search of his car, the police found the Applicant's methamphetamine under the passenger's seat. (Government Exhibit 4). Applicant was charged with (1) Failure to Appear (on an active bench warrant), (2) Expired Tags, and (3) Possession of a Controlled Dangerous Substance (methamphetamine). (Government Exhibit 2). Applicant spent two days in jail. He pled guilty to the charges and was ordered to pay fines/ fees in the amount of \$650.00 and was ordered to attend a Drug Diversion program. Applicant explained that this involved his attendance and participation in a twenty week drug awareness course between November 2005 and March 2006. (Government Exhibit 3). Once successfully completed, all charges against the Applicant would be deemed dismissed. He was also required to attend twenty Narcotics Anonymous meetings. (Applicant's Exhibit B).

Applicant contends that this was the first time he had ever used methamphetamine. Since he had been working lots of hours and coaching his son's baseball game he was tired and needed a pick up. He did not like the effects of the methamphetamine as it made him jittery and paranoid. (Tr. P. 40). Applicant states that he did not inform his security department at work about this adverse information because he was too embarrassed and knew that it could jeopardize his security clearance and his job.

It was also about this time that the Applicant was in the process of applying for special security access with another government agency. During this investigation, the Applicant did not disclose his arrest and drug use on his security clearance application

or during his interview with the investigator. Applicant was ultimately denied this clearance in June 2006. (Tr. pp. 45-46). Applicant testified that he deliberately failed to disclose the arrest and drug use because he thought that he would automatically lose his job and his security clearance if he admitted it. (Tr. p. 46).

The Applicant further testified that he has learned a harsh lesson from this experience and regrets what he did. He almost lost his wife, his family and his house. He made a mistake and will never do it again. He was embarrassed about his conduct and now understands how important it is to maintain a drug free lifestyle and to be honest. (Government Exhibit 4).

Letters of recommendation submitted on behalf of the Applicant attest to his positive attitude, hard working nature, dedication, trustworthiness, integrity and leadership abilities. He is highly recommended for a position of trust. (Applicant's Exhibit A).

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 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(b) 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;

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;

16(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which,

when combined with all available information 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. This includes but is not limited to consideration of:

16.(d)(3) pattern of dishonesty or rule violations.

Conditions 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 dishonesty and rule violations 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 poor personal conduct (Guideline E). 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 Guideline E of the SOR.

The evidence shows that as recently as March 2005, the Applicant was arrested for Failure to Appear, Expired Tags and Possession of Methamphetamine. Furthermore, he purchased and used this dangerous illegal drug while holding a security clearance from the Department of Defense. He deliberately failed to disclose this adverse information to his security department. During a previous security investigation by another agency, he deliberately concealed his arrest and drug use and was denied a special access clearance. This misconduct demonstrates a pattern of poor judgment under Guideline E, (Personal Conduct) that is fairly recent and very troubling. Under the particular facts of this case, the Applicant cannot be considered honest or trustworthy.

Under Guideline E, *Disqualifying Conditions 16(b) 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; 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; 16(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information 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. This includes but is not limited to consideration of . . . (3) a pattern of dishonesty or rule violations apply. None of the mitigating conditions are applicable. Consequently, his poor judgment adversely effects his security clearance eligibility at this time.

I have also considered the “whole person concept” in evaluating the Applicant’s eligibility for access to classified information. The Applicant is 34 years old, but has conducted himself in a very immature and irresponsible manner. 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, at this time, 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 Guideline 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 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: 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.

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