



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-01978
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

January 25, 2010

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Security Clearance Application (SF-86) on April 20, 2005. (Government Exhibit 5). On or about February 20, 2009, 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.

The Applicant responded to the SOR in writing on March 12, 2009, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on April 13, 2009. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on October 7, 2009, and he failed to submit a response. The case was assigned

to the undersigned for resolution on December 4, 2009. Based upon a review of the case file, pleadings and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 37 years old and single. He is employed by a defense contractor as an Personnel Clerk, 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 each of the allegations set forth under this guideline. He used marijuana with varying frequency, from 1994 to at least the spring of 2007. During his personal subject interview, the Applicant identified the time period of his marijuana use as "1994/02/12" to "2003/09/05" and the frequency of his marijuana use as "lots." He also stated that he used marijuana "at least once a week" during that time period, and admitted to using it "sporadically" after September 2003 to at least the spring of 2007. (Government Exhibit 6).

Applicant was charged with Possession of Paraphernalia in September 2003. He explained that he was caught with the remains of a marijuana cigarette that he had smoked the prior weekend. He was cited and fined. Three days following this incident, the Applicant used marijuana again. (Government Exhibit 6).

In April 2005, the Applicant completed a security clearance application. (Government Exhibit 5). He submitted and re-certified the application in April 2006. (Government Exhibit 5). He continued to use marijuana after submitting each of his security clearance applications.

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

The Applicant admitted with explanations the allegations set forth in the SOR under this guideline.

The Applicant completed a Security Clearance Application dated April 3, 2006. Question 27 of the application asked the Applicant, if since the age of 16 or in the last 7 years, whichever is shorter, had he illegally used any controlled substance, for example, marijuana, cocaine, etc. The Applicant listed his use of marijuana from 1994 to September 2003. (Government Exhibit 5). He failed to disclose his marijuana use up to 2006. (Government Exhibit 6). The Applicant argues that when he originally filed his security clearance application in April 2005, the information was accurate. He failed to update the information when it was re-submitted in April 2006. He contends that it was only after his interview with an investigator that he realized the information was

inaccurate. (Government Exhibit 4). I do not find this excuse credible. Common sense would dictate that you always provide updated information in response to the government's inquiries on the application or the application would be of little value. The security clearance application is an important document that the Applicant swore contained accurate information, when it did not. The Applicant failed to present sufficient evidence to refute, extenuate or mitigate the above concerns.

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;

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

Conditions 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:

16. (a) 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.

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct;
- 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 extent to which participation is voluntary;
- 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; and
- 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 predicated 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) and that he falsified his security clearance application (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 Guidelines H and E of the SOR.

The evidence shows that the Applicant used marijuana for thirteen years from 1994 to at least 2007. He used marijuana knowing that it was prohibited by law and clearly prohibited by the Department of Defense. His most recent use of marijuana occurred as recently as 2007. Given his long history of marijuana use, and the use that occurred after he submitted his security clearance application, the Applicant has failed to provide persuasive evidence that he has put his illegal drugs use behind him. This demonstrates poor judgment and untrustworthiness. Under the particular facts of this case, his use of marijuana in 2007 is considered recent in light of the fact that he continued using marijuana after completing his security clearance application, which 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 25(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 marijuana to be recent and of security significance. Accordingly, I find against the Applicant under Guideline H, Drug Involvement.

With respect to the Applicant's failure to disclose his marijuana use from 2003 to 2006, on his 2006 security clearance application, I find that it was intentional. There is no other plausible explanation for his conduct.

Under Guideline E, Personal Conduct, Disqualifying Condition *16(a) 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* applies. None of the mitigating conditions are applicable. I find that the Applicant deliberately falsified his security clearance application by concealing his marijuana use. Consequently, I find against 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 37 years old. I have considered all of the evidence. The fact remains, however, that he used marijuana for thirteen years, from 1994 to at least 2007. He was not candid in response to questions concerning his marijuana use and did not disclose this use on his 2006 security clearance application. 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 judgment, 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) and 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 Paragraphs 1 and 2 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.

Paragraph 2: Against the Applicant.
Subpara. 2.a.: Against the Applicant.
Subpara. 2.b.: 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