



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-02651
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

October 14, 2009

Decision

LYNCH, Noreen, Administrative Judge:

Applicant submitted his most recent Security Clearance Application (SF 86) on February 20, 2007. On May 19, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR)¹ 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 acknowledged receipt of the SOR, answered the allegations on June 16, 2009, and requested a decision on the record. Department Counsel requested a hearing before an administrative judge. I received the case assignment on August 14, 2009. DOHA issued a notice of hearing on August 14, 2009, and I convened the hearing

as scheduled on September 9, 2009. The Government offered Exhibits (GE 1-5), which were received without objection. Applicant testified on his own behalf. He did not present any exhibits for the record. DOHA received the transcript on September 17, 2009. Based upon a review of the record, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a and 1.b of the SOR. He acknowledged that he deliberately falsified his security clearance application for fear of losing his job.

Applicant is a 51-year-old employee of a defense contractor. He graduated from high school and obtained an associate degree in applied science technology in 1993 (GE 1). He is married and has three grown sons (Tr. 18). He has worked in a professional capacity in the electrical engineering field for his entire career. He has been with his current employer since 1995 (Tr. 19). Applicant has held a security clearance for eleven years.

Applicant smoked marijuana from 1984 until 1995. He acknowledged this illegal drug use in his December 1996 security clearance application (GE 3). Applicant signed a statement at that time that his intent was to abstain from marijuana in the future (Tr. 27). However, he continued to use marijuana while holding a security clearance.

Applicant was diagnosed with a bipolar disorder in 2003 (GE 2). His physician prescribed medications for his manic disorder. Applicant chose to self-medicate with marijuana. He used the illegal drug to help with his anxiety and subsequent depression. He continued to use marijuana on a daily basis until July 2003 (Tr. 32). The marijuana was not medically prescribed.

Applicant completed a security clearance application in February 2007. He responded "no" to question 24(a) concerning use of illegal drugs and drug activity. Applicant also answered "no" to question 24(b) concerning the use of any illegal drug while holding a security clearance. In his answer to the SOR, he admitted that he falsified material facts on the 2007 SF 86.

At the hearing, Applicant was candid. He stated he knew he lied to the government concerning his use of marijuana. He did not tell his employer of many years that he used marijuana (Tr. 21). He never admitted the illegal use or tried to correct the misinformation in his security clearance application from 2007 prior to the answers to the SOR allegations. He admitted that he probably would not have told the truth about the illegal drug use if the government had not discovered the drug use in his medical records (Tr. 22). He explained that during his manic period in 2003, he used marijuana for approximately five months. He used marijuana almost every day, using a pipe. He stopped using the marijuana in 2003 because his medication seemed to keep him on a

steady pace. However, he admitted at the hearing that he cannot say that he will not use marijuana in the future. He acknowledged this despite the fact that it is against the law and against his employer's drug policy. He deeply regrets his lack of candor about his marijuana 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 not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny 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 ¶ 2(b) 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 transcends normal duty hours and endures throughout off-duty hours. 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.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. Under AG ¶ 16(a) a disqualifying condition exists when there is “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 eligibility or trustworthiness, or award fiduciary responsibilities.” Under AG ¶ 16(b) a disqualifying condition exists when “deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.” Applicant executed his security clearance application on February 20, 2007. He admitted that he falsified information concerning his illegal drug use out of fear of losing his employment. He had already promised in 1996, when he received a security clearance, that he would not use marijuana in the future. Nonetheless, he chose not to answer “Yes” to either question on his 2007 security clearance application concerning his use of marijuana in 2003. Applicant failed to disclose illegal drug use while holding a security clearance for many years. His behavior and personal conduct are disqualifying as they raise questions about his judgment, reliability, and willingness to comply with the law.

After considering the mitigating conditions under AG ¶ 17, I find that none of them apply in this case.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of the applicant’s conduct and all relevant circumstances. The administrative judge should consider the

nine adjudicative process factors listed at AG ¶ 2(a): “(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 participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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.” Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature, well-educated professional. He served in a professional capacity for his entire career. He has held a security clearance for a number of years. He acknowledged his early use of marijuana in his 1996 application. He signed a statement that he would not use an illegal drug in the future. In 2003, Applicant used marijuana during his time with his current employer. He self-medicated due to his bipolar condition and his depression. He knew this was against the employment and DoD policy and in violation of his duties as a holder of a security clearance. He completed a security clearance application in February 2007 and deliberately falsified his responses to two questions. He admitted that he probably would never have admitted the illegal drug use if the government had not discovered the records.

Applicant made no attempt to correct his falsifications prior to being confronted. He deeply regrets the situation. He was very candid and honest at the hearing but that does not overcome or mitigate his poor judgment and dishonesty. He also acknowledged that he could not promise that he would not use marijuana in the future if his mania returned.

Overall, the record evidence leaves me with questions and doubts as to Applicant’s eligibility, judgment, and suitability for a security clearance. For all the reasons discussed above, I conclude Applicant has not mitigated the security concerns arising from his drug involvement and personal conduct.

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, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.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.

Noreen A. Lynch
Administrative Judge