



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-07237
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro Se*

May 27, 2009

Decision

LYNCH, Noreen, Administrative Judge:

Applicant submitted his most recent Security Clearance Application (SF 86), on December 5, 2007. He submitted earlier SF 86's in 2000 and 2004. On November 20, 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 acknowledged receipt of the SOR on November 26, 2008 and elected to have his case decided on the record in lieu of a hearing. Department Counsel submitted the Government's written case on February 3, 2009. Applicant received a complete file of relevant material (FORM) on February 6, 2009 and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the

Government's case.¹ Applicant did not submit additional information. I received the case assignment on May 11, 2009. Based upon a review of the case file, 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 through 1.c of the SOR. He also admitted the allegations in ¶ 2.a through 2.g. He did not provide additional information to support his request for eligibility for a security clearance.

Applicant is a 54-year-old employee of a defense contractor. He graduated from high school and obtained an undergraduate degree in 1976. He is married and has three grown children. He has worked in a professional capacity in the computer science field for his entire career. He has been with his current employer since 2002 (Item 1).

When Applicant was in college, from 1972 until 1976, he smoked marijuana. He explained that it was easily accessible and considered somewhat acceptable in the college setting. He believes his usage could be characterized as "experimental". He acknowledged using marijuana on average once or twice a month at parties (Item 6).

In the 1980's and late 1990's Applicant also used marijuana on one or two occasions during camping trips with friends. He claims his "last use" was in 2006 (Items 1 and 3). Applicant's response to the SOR is inconsistent concerning the use of marijuana. He explained that he had been drinking on the camping trip in June 2006 and was somewhat impaired and does not really remember if he used marijuana (Item 3).

Applicant held a secret clearance in October 1995 and continued to hold a secret clearance in January 2003. In October 2005, he was granted a top secret clearance. During that time Applicant admits using cocaine at a Christmas party in 2006 and during a poker game to stay awake in 2004 (Item 6). He stated that he used marijuana during his adult years due to "peer pressure" (Item 5).

In 2007, Applicant completed two separate security clearance applications. Applicant answered questions 24 and 27 concerning use of illegal drugs. He responded "no" to any illegal use for both questions. His earlier security clearance applications completed in 2004 and 2000 also did not reflect any illegal drug use as Applicant answered "no" to those questions. He intentionally omitted any information concerning illegal drug use.

In April 2007, Applicant was interviewed by another government agency (Item 6). He admitted a history of marijuana use during his interview for SCI clearance. He also told the investigator that he used cocaine once at a Christmas party. However, after

¹The Government submitted nine items in support of its case.

further questioning, he conceded that he initially withheld information about additional involvement with cocaine due to “embarrassment”. He estimated that he used cocaine between five and ten times while playing poker with friends. He was denied clearance for SCI in August 2007 (Item 6). The admission concerning the cocaine use with NSA is different than the admission to Applicant’s answer to the SOR when he stated he only used cocaine on two occasions to stay awake during a poker game.

In March 2008, Applicant was interviewed by an investigator for DoD. He told the investigator that his last use of any illegal drug was in 2000 or 2001. He omitted any information concerning illegal drug use with cocaine in 2004 or 2006 (Item 5).

Applicant admits that he answered all questions concerning illegal drug use on his security clearance applications due to “embarrassment”. He acknowledges using bad judgment. He also explains that he notified the investigator in 2008 that he needed to change his answer to Question 24. He also said the interview was conducted in a room that was not soundproof and he was in a hurry to finish the interview and that resulted in omissions.

In his answer to the SOR, Applicant regrets the “falsification of information on his Security Clearance Application Forms”. He stressed that he was embarrassed and that he did eventually admit to the illegal use. He states that he has served his country as a federal employee for almost ten years and as a contractor for over 22 years. He states that he would never jeopardize the security of his country (Item 3).

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 over-arching adjudicative goal is a fair, impartial and common sense 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 H, Drug Involvement

The security concern relating to the guideline for Drug Involvement is set out in AG & 24:

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.

The guideline notes several conditions that could raise security concerns. Under AG & 25(a), Any drug abuse^o is potentially disqualifying. Under AG ¶ 25(c) “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia” is also potentially disqualifying. Applicant admitted his use of marijuana in varying amounts and frequency spanning a period from 1972 until at least 2006. He also admitted using cocaine. These disqualifying conditions apply in this case.

Under AG ¶ 25(g) “any illegal drug use after being granted a security clearance” is a disqualifying condition. Applicant used marijuana and cocaine after having a security clearance.

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement. Under AG ¶ 26(a), the disqualifying condition may be mitigated where the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment. Applicant's pattern of illegal drug use (marijuana or cocaine) consumes a period of 20 years. He was a mature adult when he continued to use illegal drugs. This shows poor judgment and lack of trustworthiness given the fact that he had a security clearance during that time. I do not find that this mitigating condition applies.

Under AG ¶ 26(b), it may be mitigating where there is demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; and (4) a signed statement of intent with automatic revocation of clearance for any violation.” This is not a factor for consideration in this case for the reasons discussed above.

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.

Under the guideline, AG ¶ 16, describes conditions that could raise a security concern and may be disqualifying. Under 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”. Applicant executed several security clearance applications from 2000 until 2007. He never answered questions pertaining to illegal drug use in the affirmative. He admits that he was embarrassed and did not want to list them. Applicant also spoke to a DoD investigator and another government interviewer and at first denied any illegal drug use. 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 and reliability and a 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 the 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 common sense 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 and conclude that they are not sufficient to overcome the government's case. Applicant is a mature, well-educated professional. He served in a professional capacity for his entire career. He has held secret and top secret security clearances. He was considered for SCI in 2007.

Applicant completed at least four security clearance applications during his years of federal government and contractor service spanning 20 years. He deliberately omitted information concerning his illegal drug use. He made no attempt to correct his falsifications prior to being confronted.

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 H:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraphs 2.a-g: 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