



Applicant offered seven exhibits, referred to Applicant's Exhibits A through G. He also testified on his own behalf. The transcript of the hearing (Tr.) was received on August 20, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **FINDINGS OF FACT**

The Applicant is 23 years old and has a Bachelor's Degree in Engineering. He is employed by a defense contractor as an 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 attended college from August 2004 through May 2008. He used marijuana about nine times between August 2004 and March 2008. He explained that he used marijuana at parties, mostly on weekends with friends from school. Since he was very studious and determined to get good grades, he would only use it when he had no important commitments. Marijuana made him feel lazy.

The Applicant also used Adderal, a prescription drug, approximately nine times between August 2005 and January 2008. He explained that he used it to help him stay awake so that he could study longer. He stated that in the college environment, it was customary for some college students to use the drug that would prolong their studying time without them getting tired. (Tr. pp. 22 and 30).

After graduating from college, the Applicant stopped using illegal substances of any kind and he has no intentions of ever using any illegal drug again. He has signed a letter of intent indicating that he understands that any future use of any controlled substance without a lawful prescription would result in the immediate and automatic revocation of any security clearance he might hold. (Applicant's Exhibit F). He explained that he applied for an internship position with a defense contractor and was offered a summer job in 2007. Following his successful internship, he was offered a permanent position located out of state, and began his employment in July 2008. He was completely candid in response to all of the questions on his security clearance application, and disclosed his illegal drug use. The Applicant understands that the DoD prohibits the use of any illegal drug, and that his company has a zero tolerance policy.

The Applicant now has a new set of friends, who are professionals and not drug users. He lives with another engineer from his company, who does not use drugs. He now has many responsibilities, including paying his bills and supporting himself. He lives an active lifestyle and is extremely career minded. He is going back to school for his Masters in Aerospace Engineering. The Applicant states that if he encounters anyone in the future who uses drugs in his presence, he will leave the area.

Letters of recommendation from the Applicant's manager, project supervisor, coworker, girlfriend, roommate, and friends attest to his intelligence, honesty, and

trustworthy nature. He is considered to be a hardworking, conscientious person with strong moral values. Most of them are aware that the Applicant used Marijuana and Adderal while in college. They have observed the Applicant in the work place, at school and in social environments and have never seen him use any illegal drugs or medications since working for the defense contractor. (Applicant's Exhibit A, B, C, D, and E).

## **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;

#### Conditions that could mitigate security concerns:

26. (b) a demonstrated intent not to abuse any drugs in the future, such as:

26. (b)(1) disassociation from drug-using associates and contacts;

26. (b)(3) an appropriate period of abstinence;

26. (b)(4) a signed statement of intent with automatic revocation of clearance for any violation.

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, extent, 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 extent to which participation is voluntary
- f. The presence or absence of rehabilitation and other permanent 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 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 was 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 Guidelines H of the SOR. I have considered all of the evidence presented in this case, including the letters of recommendation. The Applicant used Marijuana and Adderal on an infrequent basis while in college. This was a stupid and childish thing to do. Although he is young, since graduating from college, he has joined the work force, taken on life's responsibilities, and matured a great deal. He has drastically changed his environment from a college lifestyle to a professional work environment where there is no room for illegal drug use. He has a better understanding of the seriousness and effects of illegal drugs and their effect on his personal life and his career. He has not used any illegal drug for over a year, and has no intention of ever using any illegal drug again. He is ashamed and remorseful for his misconduct in the past. He has increased his self-confidence and no longer needs to hang around with losers in society. He has signed a statement of intent indicating that he will not use illegal drugs in the future and if he does, his security clearance will be immediately revoked. This further demonstrates his commitment to a drug free lifestyle.

Under Guideline H, Drug Involvement, Disqualifying Conditions, *25(a) any drug abuse, and 25.(c) Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; apply. Mitigating Conditions 26.(b) a demonstrated intent not to abuse any drugs in the future, such as: 26.(b).(1) disassociation from drug-using associates and contacts; 26.(b).(3) an appropriate period of abstinence, and 26(b)(4) a signed statement of intent with automatic revocation of clearance for any violation* applies. Accordingly, I find for the Applicant under Guideline H, Drug Involvement.

I have also considered the "whole person concept" in evaluating the Applicant's eligibility for access to classified information. The Applicant is 23 years old, educated, intelligent, successful, and a fairly new employee of the defense industry. He understands the responsibilities of an individual, who has the privilege of holding a security clearance. He has cleaned up his act, and realizes the seriousness of illegal drug use and how negatively it can effect his life. He no longer uses illegal drugs, and

is looking forward to a successful career and a good and wholesome life. It appears that this aberration or defect in judgment was an isolated one. The likelihood of his misconduct in the past being repeated is nil. Under the particular facts of this case, the totality of the conduct set forth above, when viewed under all of the guidelines as a whole, support a whole person assessment of good judgement, trustworthiness, reliability, a willingness to comply with rules and regulations, and/or other characteristics indicating that the person may properly safeguard classified information.

This Applicant has demonstrated that he is trustworthy, and that he meets the eligibility requirements for access to classified information at this time. Accordingly, I find for the Applicant under Guideline H (Drug Involvement).

On balance, it is concluded that the Applicant has overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1.

### **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: For the Applicant.

Subpara. 1.a.: For the Applicant.

Subpara. 1.b.: For the Applicant.

### **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson  
Administrative Judge