



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-10372
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Department Counsel  
For Applicant: *Pro Se*

September 22, 2009

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on July 29, 2008. On March 11, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline H 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 April 23, 2009, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on May 28, 2009. A notice of hearing was issued on June 12, 2009, scheduling the hearing for July 14, 2009. The Government offered two exhibits, referred to as Government Exhibits 1 and 2, which were received without objection. Applicant offered thirteen exhibits, referred to Applicant's Exhibits A through M. He also

testified on his own behalf. The record remained open until close of business on July 28, 2009, to allow the Applicant to submit additional documentation. The transcript of the hearing (Tr.) was received on July 23, 2009. The Applicant submitted two Post-Hearing Exhibits referred to as Post-Hearing Exhibits A and B that were admitted without objection. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **REQUEST FOR ADMINISTRATIVE NOTICE**

Department Counsel requested that I take administrative notice of CFR 21 Section 1308.11 and United States Code, Title 21, Sections 802 and 812 which define the Controlled Substance Act. Applicant had no objection. (Tr. pp. 16-19). The request and the attached documents were not admitted into evidence, but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

## **FINDINGS OF FACT**

The Applicant is 26 years old and has a Bachelor's of Science 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 used a variety of illegal drugs while in college. He began using marijuana in August 2001, during his first semester of college. He used it once or twice each summer until May 2008. (Tr. p. 36). His last use of marijuana occurred during his college graduation. He used marijuana at social party situations, where large amounts of alcohol were consumed. Applicant attributes his illegal drug and alcohol abuse to a period in his life where he felt very insecure. His parents were divorcing, and for the first time in his life he had to pay for his college education on his own. This required that he work to support himself, pay his college tuition, and balance his school work.

During this period, the Applicant abused prescription drugs on three occasions. In 2001, he used Percoset, that he had previously been prescribed following a neck surgery, on one occasion, for a sprained ankle. He used Vicodin in 2001, on one occasion while partying with friends, and he used Xanax in 2008 on one occasion to help him sleep while in Las Vegas with a friend.

The Applicant also used cocaine several times between June 2006, and May 2008. He used it with friends at social events to fit in with the crowd. He did not enjoy the effects it had on him. On one occasion, in May 2008, he purchased cocaine from a coworker for him and his friend to use.

The Applicant used LSD on one occasion on New Years Eve 2007. At the time of his use, he was under the influence of cocaine and ecstasy. An hour after using LSD, he regretted his decision to use it. He experienced the most scary and uncomfortable effect on his body. (Tr. p. 43).

The Applicant used ecstasy one time on New Years 2007. At the time, he was under the influence of cocaine and LSD.

After graduating from college in the summer 2008, the Applicant moved out of state to pursue his professional career. During spring 2008, the Applicant decided to stop using illegal drugs altogether. He began to realize that his friends of the past that had great potential were simply wasting their lives. He realize that people who used drugs were caught in a self-limiting cycle of behavior. He also met a girl in March 2008, who became his girlfriend, and who pointed out the consequences of his negative behavior and encouraged him to replace them with more constructive ones.

Over the past year, he has made changes in all areas of his life. He has improved his financial situation, by paying off over \$10,000.00 in credit card debt. He put himself on a strict budget and is working toward paying off his student loans. He has significantly reduced his alcohol intake and has started getting involved in physical activity, such as mountain biking and yoga to deal with his stress. (Tr. pp. 46 and 60).

He no longer associates with any individuals in his past who used drugs. He is careful about the people with whom he is friendly. He now chooses to be around positive people. He no longer suffers from the insecurities that led him to use drugs just to fit in. He no longer seeks the approval of others.

Applicant's performance evaluation of 2009, reflects ratings of "exceeded expectations" and a pay raise. (Applicant's Exhibit A).

Numerous letters of recommendation from Applicant's Manager, coworkers, professional associates, landlord, friends and family attest to the Applicant's responsible nature and high ethical and moral character. The Applicant is considered to be a person of integrity who is direct, honest, dedicated and who has excellent technical and interactive social skills. He is considered extremely trustworthy and is highly recommended for a position of trust. (Applicant's Exhibits B, C, D, E, F, G, H, I, J and Post-Hearing Exhibit A).

Applicant submitted a letter of intent dated July 13, 2007, indicating that he will refrain from the use of illegal drugs in the future and that if he uses illegal drugs again, his security clearance will be subject to automatic revocation. (Applicant's Exhibit K).

Applicant underwent a controlled substance test on July 6, 2009. The results were negative for any type of illegal drug. (Applicant's Exhibit L).

## 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 has 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 favorable performance evaluations and recent promotion, and the other accomplishments of the Applicant. The Applicant used a variety of illegal drugs including marijuana, cocaine, LSD, ecstasy and on three occasions, he used prescription drugs without a prescription, namely Vicodin, Percoset and Xanax while in college. This was a stupid and childish thing to do. He has a better understanding of the seriousness and effects of illegal drugs and their addictive nature that can destroy a person. However, he has seen the negative and permanent effects illegal drugs have on people and he does not want to be one of them. The Applicant has not used any illegal drugs for the past fourteen months, and has no intention of ever using any illegal drugs again. He is ashamed and remorseful for his misconduct in the past. He has significantly matured since college, and no longer associates with illegal drug users. 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 26 years old, educated, intelligent and successful. He understands the responsibilities of an individual who has the privilege of holding a security clearance. He 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 life. 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.
- Subpara. 1.c.: For the Applicant.
- Subpara. 1.d.: For the Applicant.
- Subpara. 1.e.: For the Applicant.
- Subpara. 1.f.: 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