



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-11478
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: *Pro se*

April 13, 2010

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on April 1, 2008. (Government 1.) On June 22, 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 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 on July 17, 2009, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on September 2, 2009. A notice of hearing was issued on September 15, 2009, scheduling the hearing for November 17, 2009. The Government presented four exhibits, referred to Government Exhibits 1 to 4, which were admitted without objection. The Applicant presented seven exhibits, referred to as Applicant's Exhibits A through G, which were admitted without objection. The Applicant also testified on his own behalf.

The official transcript (Tr.) was received on December 1, 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 51 years old and married with three children. He is employed by a defense contractor as a Computer Network Administrator, 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. (Applicant's Answer to the SOR.) He used marijuana intermittently and at various frequencies from 1978 to 1981, on a daily basis; in 1987, on three occasions; from 2001 to 2002, every other day; and in 2003, on two occasions.

The Applicant began using and purchasing marijuana about the time he joined the United States Air Force in 1978. He served twenty-one years on active duty before retiring as a Master Sergeant in 1999, with an honorable discharge. During his military career, the Applicant held a security clearance and used marijuana off and on. He used it socially and enjoyed its effects. He testified that although it was prohibited, illegal drug use was quite prevalent in the military during the post-Vietnam era. He was still able to maintain a high performance level. (Tr. pp. 32-34.)

In February 1980, he was charged with Felony Possession of Marijuana. Applicant testified that he got picked up for having two ounces of marijuana. He spent the night in jail. His first sergeant came and picked him up and took him to a lawyer, who was a reservist. The lawyer took him downtown to talk to the judge, and then back to the base to handle the military matter. He received eighteen months probation as part of a pre-trial diversion program. The military sent him to a drug rehabilitation program and he was subject to drug testing. He received no other disciplinary action for his conduct. Following this charge, the Applicant continued to perform well and get promoted as he continued to use marijuana.

From 1979 to 1980, he also experimented with a variety of other illegal drugs, including cocaine, LSD, hashish, quaaludes and speed. However, marijuana was his drug of choice. (Government Exhibit 2.)

In 1999, after separating from the Air Force, he lived next door to a neighbor who sold marijuana out of his house. The Applicant started purchasing it and using it again. From October 2001 to June 2002, he used marijuana every other day and it started negatively affecting his job performance. (Tr. pp. 38 and 40.) During this period, the Applicant testified that his marijuana use, "cost him his job". He lost everything,

including his house, furniture, car and motorcycles. He was forced to file bankruptcy. (Tr. p. 25.)

In August 2003, he used marijuana two times. He testified that during his vacation, he met up with an old friend and used marijuana with him. (Tr. p. 41.) Since then, the Applicant has not used any illegal drugs and has no intentions of ever doing so again. He is active in his church three days a week, teaches Sunday school and no longer associates with individuals who use marijuana or any illegal drug. (Tr. p. 42.) The Applicant signed a letter of intent promising that he will not be involved in the use, possession or sale of any illegal drugs in the future, and if he is, his security clearance will be subject to immediate revocation. (Applicant's Exhibit A.)

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 an Electronic Questionnaire for Investigations Processing (e-QIP) dated March 31, 2008. Question 24 of the application asked the Applicant, if since the age of 16 or in the last 7 years, whichever is shorter, has he illegally used any controlled substance, for example, marijuana, cocaine, etc. The Applicant answered, "NO". (Government Exhibit 1.) This was a false answer. The Applicant failed to disclose his more recent use of marijuana from October 2001 to June 2002, and his use in August 2003. (Government Exhibit 2.)

Question 23(d) of the same application asked the Applicant if he has ever been charged with or convicted of any offense(s) related to alcohol or drugs? The Applicant answered, "NO". This was a false answer. The Applicant failed to disclose his charge for Felony Possession of Marijuana in February 1980. (Government Exhibit 3.) The Applicant explained that the incident occurred twenty-nine years ago, when he was young and in the military at the time, and he did not realize that it was a Felony. (Tr. p. 23.)

Question 24(b) of the same application asked the Applicant if he has ever used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while in possession of a security clearance; or while in a position directly or immediately affecting public safety? The Applicant answered, "NO". (Government Exhibit 1.) This was a false answer. The Applicant failed to disclose his use of marijuana from 1978 to 1981, while in the military and holding a security clearance.

The Applicant admitted that he attempted to conceal his most recent marijuana use from October 2001 to June 2002 and in August 2003, because he was fearful of losing everything all over again. (Government Exhibit 2.) He was scared and to protect himself and his family, he lied on the application. (Tr. p. 43.) Since he got away with it in the military he figured he could get away with it now. He now realizes his foolishness, he regrets his actions, and is very ashamed and remorseful. He understands that he

should have been truthful with the Government in response to the questions and states that he has learned a harsh lesson from his mistakes. (Government Exhibit 2.)

Letters of recommendation from the Applicant's immediate supervisor, coworkers and pastor indicate collectively that the Applicant is well respected. He is considered professional, reliable, truthful, trustworthy, religious, and loyal. He is said to have learned from his past mistakes. He is known to be dedicated to the proper safeguarding of sensitive national security information and recommended for a position of trust. (Applicant's Exhibits C, D, E, F and G.)

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)

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 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 intermittently, and at times on a daily basis, from 1978 to at least 2003. Applicant used marijuana while serving in the United States Air Force, and while holding a security clearance, namely in a public position of trust. He used marijuana knowing that it was prohibited by law and clearly prohibited by the Department of Defense. This misconduct is criminal, blatantly egregious and reckless, and demonstrates unreliability and untrustworthiness. Despite the fact that his most recent use of marijuana occurred in 2003, seven years ago, his marijuana use spans a twenty-five year period. This long history of marijuana use includes short periods of abstinence followed by drug use. Given this history, the Applicant has failed to provide persuasive evidence that he has once and for all put his illegal drugs use behind him.

Under the particular facts of this case, his use of marijuana is considered a significant security risk, 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 of security significance. Accordingly, I find against the Applicant under Guideline H, Drug Involvement.

With respect to the Applicant's failure to disclose his drug involvement and his felony charge for possession of marijuana on his 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 illegal drug involvement. 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 51 years old, and a late bloomer in terms of reaching maturity. I have considered all of the evidence. The fact remains, however, that he abused marijuana while serving in the military and while holding a security clearance. Furthermore, he was not candid in response to questions concerning his marijuana use and did not disclose this felony drug related charge on his 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.

Subpara. 1.c.: Against the Applicant.

Subpara. 1.d.: Against the Applicant.

Subpara. 1.e.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: Against the Applicant.

Subpara. 2.c.: Against 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