



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 09-00521  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Department Counsel  
For Applicant: Robert R. Bohn, Attorney At Law

October 28, 2009

---

**Decision**

---

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing, (e-QIP) on August 7, 2008. (Government Exhibit 1). On May 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 June 2, 2009, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on July 8, 2009. A notice of hearing was issued on July 13, 2009, scheduling the hearing for August 20, 2009. The Government offered two exhibits, referred to as Government Exhibits 1 and 2, which were received without objection.

Applicant offered ten exhibits, referred to Applicant's Exhibits A through J and testified on his own behalf. The transcript of the hearing (Tr.) was received on August 28, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **FINDINGS OF FACT**

The Applicant is 23 years old, unmarried, and has a Bachelors Degree in Engineering. He is employed by a defense contractor as a Radar Signaling Processing 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 graduated from college in May 2008, and has been working for his current employer for the past thirteen months. He testified that during his freshman year in college, in April 2005, he started using marijuana. Many of the students used it and it was readily available. The effects of the drug increased his appetite, he felt "cool" and he enjoyed it. Marijuana did not adversely affect his grade point average. His frequency of marijuana use varied from as much as two to three times a week, to as infrequently as one to two times a month. Government Exhibit 2, a statement from a personal interview of the Applicant, indicates that he used marijuana approximately 120 times. He restricted his use of marijuana to social occasions at college. He obtained the marijuana from fellow students. On at least ten occasions he purchased it for his own use. (Tr. p. 31). He last used marijuana in May 2008. (Tr. p. 30).

At the time he was using marijuana, he did not foresee any negative consequences, although he knew it was illegal. The Applicant has not used any marijuana since starting his current employment. (Tr. p. 34). He testified that he has no intentions of ever using any illegal drug again. (Tr. p. 47). He has decided that he no longer wants to use marijuana or any illegal drug again because he could lose his job. He now has a job, an apartment, auto insurance and responsibilities and wants to maintain an independent lifestyle as an adult. (Tr. p. 39).

The Applicant also consumed mushrooms on three occasions between November 2007, and March 2008. He tried them because he heard it would be crazy with psychedelic effects, hallucinations and real intense things. (Tr. pp. 38-39). He enjoyed the experiences.

The Applicant also used valium without a prescription as a college sophomore in June 2006. He explained that he was peer pressured by one of his roommates. He believes that the pill had no effect on him.

In June 2008, the Applicant underwent a company drug test and the results were negative. (Applicant's Exhibits H and I).

Letters of recommendation from the Applicant's program manager and coworkers, attest to his good character, work ethic and honesty. They believe that he has learned from his mistakes of the past and that he has greatly matured since college. They have never witnessed the Applicant under the influence of any illegal drug or alcohol. He is highly recommended for a position of trust. (Applicant's Exhibits A, B, C and D).

Applicant's performance appraisal of 2008, reflects overall that he "frequently exceeds expectations." (Applicant's Exhibit F).

Applicant has received a certificate for completing a security awareness and education course administered by his company in February 2009. (Applicant's Exhibit E).

Applicant, in coordination with his company security officer, prepared and signed a memorandum dated August 18, 2009, wherein it indicates that if the Applicant is found to be in violation with of the Department of Defense or his company drug policy, or if he violates the policies, he must report the incident to the security office. The company will then notify DISCO of the incident and DISCO may take action by revoking the Applicant's security clearance. (Applicant's Exhibit J).

Applicant has a 401(k) with his employer that is increasingly growing. (Applicant's Exhibit 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)

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.

Condition that could mitigate security concerns:

26. (b) a 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;

(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 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 permanent behavioral 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 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 not introduced persuasive evidence in rebuttal, explanation or mitigation that is not sufficient to overcome the Government's case under Guideline H of the SOR.

This is a close case. However, the evidence shows that the Applicant’s history of illegal drug use is recent. He used marijuana, mushrooms and valium without a prescription during college, from 2005 to 2008, and up until he obtained his current employment. He believes that he has greatly matured since college, however, he is still very young and immature. He appears to now recognize the negative effects the use of illegal drugs has on his job and his ability to adequately protect classified information. However, there is no track record to demonstrate that he can remain drug free and that he will not succumb to peer pressure. Although he states that he has no intentions of using any illegal drugs in the future, he has only been drug free for thirteen months. Given this short period of abstinence, I am not certain that he will remain drug free. At

this time, the Applicant is not eligible for a security clearance. If he can continue to remain drug free, at some point in the future, he may be eligible for a security clearance, but not now. His last use of illegal drugs occurred in 2008, just last year, and prohibits a favorable determination in this case.

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 Condition 26(b) a 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; (4) a signed statement of intent with automatic revocation of clearance for any violation* arguably applies, but under the particular circumstances of this case falls short and is not mitigating given the extent of his illegal drug use, his insufficient period of abstinence, and his immaturity and youth. I find his past use of illegal drugs to be recent and of security significance. Accordingly, I find against 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 just 23 years old. Although he is intelligent and educated, he is also young and immature. He last used illegal drugs in 2008, and now states that he has no intentions of using it in the future. Sufficient time has not passed to demonstrate that he will remain drug free. 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 judgement, 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).

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 Paragraph 1 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.

## **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