



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



In the matter of:)
)
) ISCR Case No. 09-00528
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: Roberto Stefano, Personal Representative

October 20, 2010

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has mitigated the Drug Involvement, Criminal Conduct, and Personal Conduct security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On May 14, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H, Drug Involvement; J, Criminal Conduct; and E, Personal Conduct . The action was taken under Executive Order (EO) 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) effective for cases after September 1, 2006.

Applicant answered the SOR on June 17, 2010, and requested a hearing before an administrative judge. The case was assigned to me on July 22, 2010. DOHA issued a notice of hearing on August 16, 2010, and the hearing was convened as scheduled on

September 8, 2010. The Government offered Exhibits (GE) 1 through 6, which were admitted without objection. The Applicant offered Exhibit (AE) A, called five witnesses, and testified on his own behalf. The record was left open for the submission of additional documentation and on September 23, Applicant submitted 26 pages, marked AE B. Department Counsel had no objection to AE B and it was admitted. DOHA received the transcript of the hearing (Tr.) on September 16, 2010.

Findings of Fact

Applicant admitted the SOR allegations ¶¶ 1.a, through 1.g., 1.i. through 1.m., 2.b., and 3.a. through 3.c. He denied SOR ¶¶ 1.h., and 2.a. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 27-year-old employee of a defense contractor. Applicant's use of illegal substances began at the age of 14, with marijuana. It escalated at age 17 or 19, and led to his use of methamphetamines. He used methamphetamines from approximately 1995 through 2007; benzodiazepines, a prescription drug he misused, from approximately 1994 to February 2007; codeine, a prescription drug he misused, from 1994 through 2006; and opioids, a prescription drug he misused, from 1994 to 2007; and cocaine once in approximately 1996, despite the fact that he knew it was against the law to take illegal substances and misuse prescription drugs. Applicant explained that he got into drug use because he had problems with self-worth and self-esteem. (GE 1; GE 2; GE 4; Tr. 60-65, 98, 107-110.)

At age 19, in April 2003, he was arrested and charged with Felony Possession of a Controlled Substance and Possession of Smoking Device. Applicant pled guilty to Possession of a Controlled Substance and was placed on a deferred entry of judgment for a period of 18 months. On this occasion, Applicant was in a vehicle that ran out of gas on the side of the road. A police officer stopped and asked for identification. The officer conducted a search of the vehicle and found paraphernalia in the vehicle. Applicant maintained approximately six months of sobriety after this arrest. (GE 1; GE 2; GE 5; GE 6; Tr. 66-68, 99-101, 109.)

Applicant was also charged with reckless Driving with Bodily Injury in May 2003. He had made an unsafe lane change and ran another vehicle off of the road. Applicant received a summons to appear in court in the mail. He pled guilty to the charge and he entered a deferral program where he was fined \$140 and placed on probation for 36 months. He abstained from methamphetamine use during the beginning of his term on probation, but resumed its use prior to the termination of probation. (GE 2; GE 5; Tr. 102-104.)

Applicant was treated at a residential in-patient drug treatment facility for 30 days from November to December of 2003. Applicant successfully completed the rehabilitation program. When he left the program, he fully intended to abstain from the use of alcohol and illegal substances. He was successful in abstaining from drugs and alcohol for approximately one year. However, as time passed, he began to feel that he was "too young" to have a problem with addiction and gradually returned to consuming

alcohol when he turned 21. His alcohol consumption led him back to drugs. (GE 1; Tr. 109-110.)

Applicant began working for a defense contractor in February of 2006. At that time, he applied for a security clearance and was granted an interim clearance in early 2006. He was aware of both his employer's policy against drug use and the Government's policies against drug use, and he attempted to refrain from using illegal substances. However, he was unable to abstain for long, and soon found himself using illegal substances including methamphetamines again. In July 2006, co-workers witnessed Applicant with drug paraphernalia in the workplace and confronted him. He was referred to the employee assistance program, which referred him to outpatient treatment. He was also subjected to a drug test by his employer. Applicant failed that drug test and was terminated by his employer. His drug use increased after his termination. (GE 1; GE 2; Tr. 51, 81, 104.)

Applicant received outpatient treatment in August 2006, but he failed to successfully complete it. He was unable to make himself get to his outpatient classes. He continued to use illegal substances. (Tr. 68-69, 81-84.)

In February 2007, Applicant was arrested and charged with Under the Influence of Controlled Substances, Possession of Controlled Substances, and Possession of Smoking Device. He was convicted of Possession of a Controlled Substance. Applicant claims he was traveling with people who had paraphernalia, "and stuff," including prescription medications not prescribed to Applicant in the car. They got pulled over. The car was searched and paraphernalia was discovered, and they "put it on [Applicant]." Applicant was sentenced to one year probation, with the stipulation that he have no further arrests and he was required to attend out-patient drug treatment. (GE 1; GE 2; GE 5; GE 6; Tr. 84-86, 104.)

Applicant attended a drug and alcohol treatment facility for 21 days from February 14, 2007 to March 8, 2007. He was diagnosed with Chemical Dependency to include amphetamine dependence and sedative dependence. Prior to his 2007 treatment, he had made four prior attempts to stop using drugs, but his attempts were unsuccessful and he eventually relapsed. However, he successfully completed the treatment program in 2007, and has abstained from drugs and alcohol since entering treatment. At the time of discharge, his prognosis was "good-providing client maintains 12-step meetings and follows [medical] after care plan." (GE 2; GE 3; AE B; Tr. 71-77.)

After completing treatment, Applicant chose to move into a sober-living environment, on the same city block as the treatment center, with 12 other people for one year. During that year, he attended five to six 12-step meetings per week and visited the treatment center on a daily basis. He realized that alcohol is a drug and that he needed to abstain from alcohol use. He presented a letter from the sober-living house that noted he was "an ideal tenant." He was drug tested on a weekly basis, the entire time he lived there, and required to attend at least 4 12-step meeting per week. After a successful year at the sober-living house, he moved into a shared apartment with others from his treatment program. He now lives with his parents, who are very

supportive of his sobriety. Applicant still attends 12-step meetings three to five times per week. (AE B; Tr. 58-59, 71-76.)

Applicant has not used any illegal substances or misused prescription drugs since February 2007. Further, he has not associated with any drug users since February 2007. He attributes the success of his treatment program in 2007 to the support he got after treatment. His pledge not to use illegal substances again is credible. He speaks publicly about his drug problem, goes to hospitals, and does house calls, to speak about rehabilitation. He has sponsored six to ten other men in a 12-step program. He does volunteer activities with the treatment facility including visiting Skid Row and feeding the homeless there. He takes 12-step meetings to the jails and tries to help others that need help. He now uses the gym, his spirituality, and sporting events to fill his time productively. (AE A; Tr. 58-59, 63, 69-70, 75, 112-120.)

In May 2008, Applicant was rehired by the same defense contractor, after a year of sobriety. He was subject to a probationary employment period of one year, during which time he underwent random drug urinalysis tests. He presented documentation that shows he passed each test. Further, he voluntarily submitted to a drug test on September 14, 2010, to verify he is still drug free. He presented documentation of this drug test showing he tested negative for illegal substances. Since May 2008, Applicant has received no disciplinary write-ups. In fact, he received performance awards in October 2008 and January 2009, and an Employee Suggestion Award in January 2009. (AE A; AE B; Tr. 87-91.)

Applicant has the support of his supervisors and colleagues. His witnesses and character letters attest to the change Applicant has undergone since he was rehired in May 2008. He is now considered to be a dedicated and reliable worker who is conscientious about his work. One supervisor opined Applicant “always displays a high degree of integrity, responsibility, and ambition; his work ethic was top notch.” Additionally, Applicant’s uncle and father testified about Applicant’s accomplishments and commitment to remaining sober. (AE A; AE B; Tr. 10-30, 123-141.)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense 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.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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 EO 10865 provides that adverse 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

AG ¶ 24 expresses the security concern pertaining to Drug Involvement:

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.

I have considered all of the evidence in this case and the disqualifying conditions under Drug Involvement AG ¶ 25 and especially considered the following:

- (a) any drug abuse;
- (b) testing positive for illegal drug use;

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;

(f) failure to successfully complete a drug treatment program prescribed by a duly qualified medical professional; and

(g) any illegal drug use after being granted a security clearance.

The Government presented sufficient information to support all of the factual allegations under Guideline H (SOR 1.a.-1.m.). Applicant used illegal substances from approximately 1994 through 2007. His drug uses lead him to treatment on three occasions and resulted in a diagnosis of chemical dependency. He continued his drug use, as established by failed urinalysis administered by his employer, despite being granted an interim security clearance in 2006. The facts established, through the Government's information and through Applicant's admissions, raise a security concern under all of the above disqualifying conditions.

I have considered all of the evidence in this case and the mitigating conditions under Drug Involvement AG ¶ 26 and especially considered the following:

(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; and

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant used illegal drugs over a period of 13 years, which is a considerable amount of time. He also has relapsed back into drug use after treatment in the past. However, since 2007, he has demonstrated a firm commitment to abstaining from the use of illegal substances. He no longer associates with drug users and he has completely changed his environment since he used drugs. He now surrounds himself with people focused on recovery. He voluntarily participated in an inpatient treatment program in 2007 and was given a "good" prognosis, if he followed up with after care. He did in fact participate in after-care, choosing to live in a sober-living house for a year after his treatment. He continues to go to 12-step programs weekly. He not only devotes his efforts to remaining sober, but he volunteers in many activities to help others in their efforts to maintain sobriety. Applicant has demonstrated in the past three years that he is committed to a sober life style and has not had any relapses since 2007. AG ¶ 26(b) and (d) apply.

Guideline J, Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

- (a) a single serious crime or multiple lesser offenses; and
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant has a history of criminal offenses including his illegal drug use, his April 2003 arrests, his May 2003 arrest, and his 2007 conviction. The above disqualifying conditions have been established.

Two Criminal Conduct mitigating conditions under AG ¶ 32 are potentially applicable:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant has a long history of criminal behavior. However, his offenses occurred when he was young and less mature. Three years have passed since his last offense. During that time, he has committed himself to sober living. He attends 12-step meetings several times a week, surrounds himself with people committed to a sober lifestyle, and has redeemed himself in the eyes of his employer. His supervisors support Applicant's application and speak highly of Applicant. Due to the recent, positive changes in Applicant's life, further Criminal Conduct is unlikely to recur. He has demonstrated that he has successfully rehabilitated himself. His past criminal behavior does not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 32(a) and 32(d) apply.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

Applicant's past drug use and criminal behavior, to include using illegal substances, after being granted an interim security clearance, demonstrates questionable judgment. AG ¶ 16(e) applies.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant has been sober for over three years now. His co-workers, supervisors, family, and friends are all aware of his past problems with drugs. He conducts public speaking engagements about sobriety, and works publically to assist others in getting treatment. Applicant is committed to sober living, and has demonstrated that his past drug and criminal involvement does not cast doubt on his current reliability, trustworthiness, or good judgment. Further, he has successfully rehabilitated himself and has taken steps to avoid ever using drugs in the future, including continuing to

attend his 12-step program several times a week. He is unlikely to return to his criminal past including the use of illegal substances. AG ¶ 17(c) and 17(d) apply.

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 relevant 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 commonsense 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. I have incorporated my comments under Guidelines H, J, and E in my whole-person analysis. Independent of my analysis under those Guidelines, I find that Applicant has mitigated the security concerns under the whole-person concept.

Applicant's life has drastically changed in the past three years. He has accepted that he has a chemical dependency, and has worked hard to maintain sobriety. He had a serious drug problem, but has dedicated himself to his recovery. He surrounds himself with good influences and helps others to fight their addictions. These changes, as attested to by Applicant's friend, uncle and father, are permanent. The potential that he would be subject to pressure, coercion, exploitation, or duress is unlikely, given his lifestyle choices since February 2007. There is little likelihood of recurrence as Applicant has taken his after care responsibilities seriously and his prognosis is good.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Drug Involvement, Criminal Conduct and Personal Conduct security concerns.

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:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.e.:	For Applicant
Subparagraph 1.f.:	For Applicant
Subparagraph 1.g.:	For Applicant
Subparagraph 1.h.:	For Applicant
Subparagraph 1.i.:	For Applicant
Subparagraph 1.j.:	For Applicant
Subparagraph 1.k.:	For Applicant
Subparagraph 1.l.:	For Applicant
Subparagraph 1.m.:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a.:	For Applicant
Subparagraph 2.b.:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a.:	For Applicant
Subparagraph 3.b.:	For Applicant
Subparagraph 3.c.:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Jennifer I. Goldstein
Administrative Judge