



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 09-01070
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Nagel, Department Counsel  
For Applicant: Joseph A. Testan, Attorney At Law

June 21, 2010

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on July 3, 2008. (Government Exhibit 1.) On October 23, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines H, E and B 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 (DoD) for SORs issued after September 1, 2006.

The Applicant responded to the SOR on November 9, 2009, wherein he requested a hearing before a DOHA Administrative Judge. This case was assigned to the Administrative Judge on December 8, 2009. A notice of hearing was issued on January 8, 2010, scheduling the hearing for March 9, 2010. At the hearing the Government presented three exhibits, referred to as Government Exhibits 1 to 3, which were admitted without objection. The Applicant presented two exhibits, referred to as Applicant's Exhibits A and B, and called two witnesses. He also testified on his own

behalf. The official transcript (Tr.) was received on March 22, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **REQUEST FOR ADMINISTRATIVE NOTICE**

Applicant's Counsel requested that I take administrative notice of certain facts concerning the current political condition in Colombia that were set forth in Administrative Notice document 1, particularly page 7, paragraphs 3 and 4. Department Counsel had no objection. The document was not admitted into evidence but was 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 Bachelors Degree in Aerospace 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 admitted allegations 1(a), 1(b), 1(c) and 1(e), and denies allegation 1(d) of the SOR set forth under this guideline. (Applicant's Answer to SOR.) The Applicant used marijuana in total about 100 times and cocaine at least once, between the period from 1996 to June 2009.

He started using marijuana at the young age of thirteen, and used it four or five times through high school. (Tr. p. 40.) Beginning in his second year of college, he started using marijuana on a weekly basis. He continued to use it weekly until about 2005. In 2007, he graduated from college, and has used it less than ten times since then. (Tr. p. 41.) He states that he used marijuana once in February 2008, and once in July 2008, while on trips to Canada, where he also purchased it. He used marijuana most recently about five times in June 2009, while on vacation in the Bahamas, where he also purchased it. (Tr. pp. 42-43 and 86.)

In June 2008, the Applicant started working for his current employer. He completed a security clearance application in July 2008. During an interview with the Defense Department in August 2008, the Applicant indicated to the investigator that he may use marijuana in the future. (Tr. p. 45.) Applicant testified that he Applicant knew that his use of marijuana is illegal, against company policy and against DoD regulation. (Tr. pp. 75-82 and 87.) Despite this, he made the choice to use marijuana again in June 2009. (Tr. p. 86.) Applicant stated that when he received the interrogatories from the DoD, and after speaking to a co-worker about his marijuana use, he decided to stop using marijuana altogether. (Tr. p. 43.) Applicant presented an undated statement

wherein he promises not to use marijuana or any other illegal drug ever again with the understanding that if he violates his promise, his security clearance would be automatically revoked. (Applicant's Exhibit B.)

The Applicant used cocaine on one occasion in March 2007, while on vacation in Mexico. The Applicant explained that he was at a bar when some locals offered him a cocaine taste. He took the taste, not wanting to offend the locals and put a dab on his lips and gums, and they became numb. (Tr. p. 53.) He was then asked if he wanted to purchase it, and he declined.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he has engaged in conduct involving questionable judgment, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations.

The Applicant admits allegation 2(a) and denies allegation 2(b) of the SOR set forth under this guideline. (Applicant's Answer to SOR.) The Applicant completed a security clearance application dated July 3, 2008. Question 24(a) asked him if since the age of 16 or in the last 7 years, whichever is shorter, had he illegally used any controlled substance. The Applicant responded, "Yes," and listed marijuana, and the dates of September 2003 and February 2008. The Applicant explained that his more frequent use of marijuana started in September 2003, and his last date of use occurred in February 2008.

Applicant further explained that he did not list cocaine on his security clearance application because he does not believe he has used it as described above. (Tr. p. 55). He does not believe that he was under the influence of the drug and therefore was not deliberately lying in response to the question by not listing it.

Paragraph 3 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant admits the allegation of the SOR set forth under this guideline. (Applicant's Answer to SOR.) The Applicant was born in Colombia and has lived in the United States since he was six years old. All of his immediate family members from Colombia, have moved to the United States and have become United States citizens. He has an aunt and a cousin (his mother's sister and her daughter), who are citizens of Colombia and currently reside with the Applicant in his parents home. They were sponsored by the Applicant's mother in 1998, and both currently have a green card. His aunt is a nanny, and his cousin is a full time student. They have lived in the Applicant's mother's home for the past ten years. They petitioned for permanent residency in 2001, and intend to become American citizens. Neither of them have any affiliation with the Colombian government. The Applicant provides no financial support to either foreign relative and feels no sense of obligation to them. Applicant also has relatives in

Colombia on both his mother and father's side of the family, but has no contact with them what so ever.

I have taken official notice of the following facts concerning Colombia. Colombia is the third-most populous country in Latin America, after Brazil and Mexico. In 1822, the United States became one of the first countries to recognize the new republic and to establish a resident diplomatic mission. Over the years, the United States and Colombia have signed many important agreements addressing the issues of environment, civil aviation, chemical control, and maritime ship boarding to allow for search of suspected drug running vessel. Since 2007, nearly \$570 million have been invested only in socio-economic and humanitarian assistance to Colombia. In November 2009, a new multi-year Country Assistance Agreement with the Government of Colombia was signed with first year funding of nearly \$212 million. The agreement brings continuity to the socio-economic and humanitarian assistance that the United States Government implements in the country. The United States has continued close cooperation with Colombia concerning terrorism and the illicit narcotics trade. The United States policy toward Colombia supports the Colombian Government's efforts to strengthen its democratic institutions, promote respect for human rights and the rule of law, foster socio-economic development, address immediate humanitarian need, and end the threats to democracy posed by narcotics trafficking and terrorism. Promoting security, stability, and prosperity in Colombia will continue as long term American interests in the region.

Two witnesses testified on behalf of the Applicant. His girlfriend, who has known him for two years, and who does not use any illegal drugs, testified that she believes the Applicant to be reliable, trustworthy, and a man of his word. She does not believe that he will ever use any illegal drug again. (Tr. pp. 22-24.)

The Applicant's uncle, who has known the Applicant for the past twenty years testified that the Applicant is honest, trustworthy and a man of his word. He believes he will follow through with his commitment to refrain from illegal drug use. (Tr. pp. 27-30).

Twelve letters of recommendation from the Applicant's supervisor, coworkers, professional associates and friends, who have had daily contact with the Applicant at work, consider him to be honest, reliable and trustworthy. He is said to be bright, articulate and eager to learn and perform. He has always exercised good judgment and is highly recommended for a position of trust. (Applicant's Exhibit A.)

## **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.

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.

### Foreign Influence

6. *The Concern.* Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not

limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Conditions that could raise a security concern:

7. (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

7. (d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion;

Conditions that could mitigate security concerns:

8. (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

8. (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

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 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, personal conduct, and foreign contacts 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 a history of illegal drug use (Guideline H), the appearance of dishonesty (Guideline E) and foreign influence (Guideline B). 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.

The Applicant has used marijuana while working for a defense contractor. He knew at the time that the use of marijuana is illegal, against company policy, and against DoD regulation. His most recent use of any controlled substance occurred in June 2009, just last year. Furthermore, during an interview with a DoD investigator in August 2008, he stated that he may use illegal drugs in the future. He later changed his statement indicating that he will never use any illegal drug in the future, and consents to having his security clearance automatically revoked if he does. Given his past history, there is no guarantee that he will remain drug free in the future or that his word can be relied upon. Although the probability is low that he will return to drug use, the possibility exists, and poses a security risk that cannot be ignored. 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. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline H, Drug Involvement.

Turning to Guideline E, I find that the Applicant was confused, but that he did not deliberately falsify his security clearance application in regard to his illegal drug use. He clearly revealed the full extent of his marijuana use. He also told the investigator during his interview that he believed he did not use cocaine and that is why he did not reveal its use on his security clearance application or in response to interrogatories. The Applicant does not believe that his taste of cocaine is considered, "use" as defined by question 24(c) of the security clearance application and therefore he answered the question in the negative. Although his interpretation of the situation is wrong, I do not find his falsification to be intentional. I understand his confusion and do not believe he intentionally lied in response to the question. Accordingly, I find for the Applicant under Guideline E, Personal Conduct.

As to his foreign influence under Guideline B, I find that the Applicant's aunt and cousin from Colombia, who live with his parents, do not pose a security risk. In fact, the Applicant feels that they are taking advantage of his parents. There is no close bond, or strong and deep affection. He has no legal, ethical or moral obligation to them. The Applicant identifies as an American with loyalty and responsibilities only to the United States.

It is also noted that the current political situation in Colombia elevates the cause for concern in this case. However, the Applicant has no bond of affection with his foreign relatives or with Colombia. Under the particular circumstances of this case, the relationship that he has his aunt and cousin could not potentially cause the Applicant to become subject to foreign exploitation, inducement, manipulation, pressure, or coercion. Therefore there is no possibility of foreign influence that could create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is



not vulnerable to foreign influence. Accordingly, I find for the Applicant under Guideline B (Foreign Influence).

I have also considered the “whole-person concept” in evaluating the Applicant’s eligibility for access to classified information. The Applicant is a young man who is still naive and immature. As recently as last year, he used marijuana in total disregard for the law, company policy and DoD regulation. By doing so, he reveals a defect in judgment. 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.

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline H of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guideline H. This Applicant is not sufficiently trustworthy and does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline H (Drug Involvement). Guidelines E (Personal Conduct) and Guideline B (Foreign Influence) are found for the Applicant.

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. Paragraphs 2 and 3 of the SOR are found for the Applicant.

## **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: For the Applicant.

Subpara. 2.a.: For the Applicant.

Subpara. 2.b.: For the Applicant.

Paragraph 3: For the Applicant.

Subpara. 3.a.: For 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