



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-01515
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

June 21, 2010

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on November 19, 2008. (Government 1.) On November 23, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines E, H and J 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 December 9, 2009, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on January 22, 2010. A notice of hearing was issued on March 2, 2010, scheduling the hearing for April 15, 2010. At the hearing the Government presented four exhibits, referred to Government Exhibits 1 to 4, which were admitted without objection. The Applicant presented one exhibit, referred to as Applicant's Exhibit A, that was admitted without objection. He also testified on his own behalf. The official

transcript (Tr.) was received on April 27, 2010. 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 20 years old and has a high school diploma. He is employed by a defense contractor as an Engineer Technician, and is applying for a security clearance in connection with his employment.

Paragraph 1 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because engaged in conduct involving questionable judgment, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations.

The Applicant admitted each of the allegations set forth in the SOR under this guideline. (Tr. p. 9.) The Applicant began working for his current employer in June 2008. Since then he has received two pay increases for his work performance. He got the job through a family friend, in lieu of joining the military.

The Applicant has been cited for three driving infractions. In December 2007, six months before he was hired by his current employer, he was cited for Driving Past Curfew. The Applicant stated that he was seventeen years old at the time. He was spending the night at a friend's house and got up in the middle of the night to drive home to pick up his work clothes. A police officer pulled him over.

A few months later, in February 2008, he was cited for (1) Unsafe Left Hand Turn (2) Obstructed View, (3) Not in Possession of Driver's License, and (4) Failure to Signal. The Applicant explained that it was raining, he was turning right, and his blinker was not working. The police pulled him over and asked why his blinker was not on. The Applicant told the officer that his blinker was out, but the officer told him that he should have used his hand signals to make the turn. The officer also noticed air freshener hanging on the Applicant's rear view mirror that was obstructing the Applicant's view. In addition, the Applicant did not have his driver's license in his possession at the time, because he was wearing basketball shorts. (Tr. p. 42.)

Three months later, in May 2008, the Applicant was cited for speeding and was fined. The Applicant explained that he was going to the store to get some medicine for his little brother. He was doing 60 miles per hour in a 55 mile speed limit.

Subparagraphs 1(a) and 1(b) will be discussed under Paragraph 3, below.

Paragraph 2 (Guideline H - Drug Involvement). The Government alleges that the Applicant is ineligible for clearance because he abuses illegal drugs.

The Applicant admitted the allegation set forth in the SOR under this guideline. (Tr. pp 8 - 9). The Applicant used marijuana two or three times between December 2007 and January 2008. He testified that he has no intention of ever using marijuana again. He also used cocaine and ecstasy on one occasion on the same day in January 2008. He tested positive for illegal drugs during a drug screening test by his probation officer in January 2008. He attributes his illegal drug use to peer pressure. He no longer associates with any drug users.

Paragraph 3 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he has engaged in criminal activities.

The Applicant admitted the allegation set forth in the SOR under this guideline. (Applicant's Answer to SOR.) In August 2005, the Applicant was arrested for Grand Theft from Person. He explained the circumstances of this arrest. He was fifteen years old at the time. He and his friends were waiting in line for ice cream. The person in front of them had a \$5.00 bill showing. Applicant claims that his friend took the \$5.00 bill and ran. The police arrived, and the Applicant told the officer that he did not know who took the money. The Applicant was instructed to empty his pockets and he had a \$5.00 bill. Applicant believes that he upset the officer because he was not listening to him. Applicant was accused of stealing the money, and was arrested and taken to jail. Applicant was issued a citation and required to appear in court. Unintentionally, he missed his court date and a warrant was issued for his arrest. The court ultimately dismissed the case. (Tr. pp. 34 - 37.)

In September 2007, the Applicant was arrested and charged with Burglary, a felony. He explained the circumstances of this arrest. Applicant and a friend went into a department store to steal. The Applicant took a bottle of alcohol, his friend took some clothes, alcohol and candy. They were stopped by a security guard as they were walking out of the door. They tried to run, but were caught. The police were called and the Applicant was arrested and taken to jail. The Applicant was placed on supervised probation for one year, complete 80 hours of community service, and attend 20 hours of either Narcotics Anonymous or Alcoholics Anonymous meetings. Applicant attributes his bad conduct to hanging around the wrong crowd. (Government Exhibits 2 and 4.)

Letters of recommendation from the Applicant's General Manager; mother; a mentor and good friend, who is retired military; another friend; and his grandmother, indicate that he is considered responsible, trustworthy, professional, and a man of integrity. He is said to be a hard worker with strong leadership qualities. He is recommended for a position of trust. (Applicant's Exhibit A.)

The Applicant testified that he currently has a girlfriend, who has kept him for the past two years on the straight and narrow path. Although she did not testify, she was present at the hearing for moral support. The Applicant states that she has brought out the best in him and he has become a completely changed person. He recently

purchased a house. Although alcohol consumption is not alleged, the Applicant currently consumes alcohol, and is currently breaking the law. He knows that it is illegal for him to consume alcohol in the state, as he is under the legal age limit to consume alcoholic beverages.

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 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.(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.

Conditions that could mitigate security concerns:

None.

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 J (Criminal Conduct)

30. *The Concern.* Criminal activity creates doubt about a person'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.

Conditions that could raise a security concern:

31.(a) a single serious crime or multiple lesser offenses;

31.(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Condition 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 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 personal conduct, drug involvement, and criminal conduct 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 poor judgment and questionable conduct, (Guideline E), has a history of drug involvement (Guideline H), and criminal conduct (Guideline J). 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 E, H and J of the SOR.

The evidence shows that the Applicant, as young as he is, has a recent history of questionable judgment, illegal drug use, and criminal conduct. Just several months before being hired by his current employer, he used illegal drugs, including marijuana, cocaine and ecstasy. He also tested positive for illegal drugs during a drug screening test by his probation officer. He was arrested and convicted of Burglary just a year before starting his employment with a defense contractor. He has also had three traffic violations within the last two years. Furthermore, although it is not alleged, he is consuming alcohol when he is under the legal age to do so in this state. Given this history, he has not demonstrated the level of maturity required to have access to classified information.

Under Guideline E, Personal Conduct, Disqualifying Condition 16.(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* applies. None of the mitigating conditions are applicable. Consequently, I find against the Applicant under Guideline E, Personal Conduct.

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.

Under Guideline J (Criminal Conduct), Disqualifying Conditions 31.(a) *a single serious crime or multiple lesser offenses*, and 31.(c) *allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted* apply. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline J, Criminal Conduct.

I have also considered the “whole-person concept” in evaluating the Applicant’s eligibility for access to classified information. 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 E (Personal Conduct), Guideline H (Drug Involvement), and Guideline J (Criminal 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, 2 and 3 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.
- Subpara. 1.f.: Against the Applicant.
- Subpara. 1.g.: Against the Applicant.
- Subpara. 1.h.: Against the Applicant.
- Subpara. 1.i.: Against the Applicant.

Paragraph 2: Against the Applicant.

- Subpara. 2.a.: Against the Applicant.

Paragraph 3: Against the Applicant.

- Subpara. 3.a.: 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