

Judge for resolution on February 5, 2010. 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 24 years old and has a Bachelor's Degree in Computer Science. He is employed by a defense contractor 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.) Applicant attended college from August 2004 through May 2008. He used a variety of illegal substances during a six year period from 2003 to at least January 2009, which includes marijuana, DMT, MDMA (ecstasy), LSD, hallucinogenic mushrooms, and the misuse of the prescription drug Adderall. Applicant used marijuana at varying frequencies from 2003 to December 2008. He used DMT approximately three times from about January 2005 to at least December 2007. He used MDMA (ecstasy) approximately three times from about June 2008 to January 2009. He used LSD approximately two times from about May 2007 to at least December 2008. He used hallucinogenic mushrooms at least five times, possibly more, from March 2006 to July 2008. He also used the prescription drug Adderall, without a prescription, from November 2004 to at least May 2008.

Applicant completed a security clearance application on December 5, 2008, and continued to use marijuana, LSD and MDMA (ecstasy) after this date. Applicant contends that he has not used any illegal drug in the past year. In his answers to interrogatories dated July 6, 2009, he states that, "I have no plans to use marijuana ever again, but for the purpose of full disclosure, I would be not be surprised if I did use it at some point in my life - just no time soon." (Government Exhibit 7).

The Government also alleges in allegation 1(a) of the SOR, that the Applicant illegally used the drug, salvia, on two occasions in about 2004 and 2005. Applicant admits the allegation. Department Counsel submitted evidence conceding that the substance is not listed as a controlled substance under the Federal Controlled Substance Act, nor was it illegal in the state of New York where the Applicant used it. (Government Exhibit 8). Accordingly, I shall not consider the use of this particular drug in my decision.

Paragraph 2 (Guideline G - Alcohol Consumption). The Government alleges that the Applicant is ineligible for clearance because he abuses intoxicants.

The Applicant admitted each of the allegations set forth under this guideline, except 2(c). He started drinking alcohol during his sophomore year of high school, usually one to two times a month at parties. He consumed alcohol to the point of

intoxication at least once a month until October 2004. From October 2004 to January 2006, his drinking occurred one to two times a week, consuming a few beers socially with friends. From January 2006 to November 2006, his drinking increased to three times weekly with roommates or occasionally at bars. He drank to the point of intoxication about two times a week. As a consequence of his excessive use of alcohol on campus from November 2006 to February 2007, the Applicant was referred by the college to undergo an alcohol abuse evaluation. He was removed from campus for the remaining of the semester for violating campus rules, which is set forth below. From September 2007, to May 2008, the Applicant drank five days a week, drinking to the point of intoxication three to four times a week.

In November 2007, he was arrested and convicted of Driving While Impaired. The Applicant was again referred to undergo a substance abuse evaluation, this time by the state. He pled guilty, was sentenced to a fine, his license was suspended, and discharged on condition that he attend a drinking drivers program and victim impact panel. (Government Exhibit 7.) Applicant contends that at the time he submitted his initial response to the SOR, in March 2009, he was consuming alcohol to the point of intoxication approximately once a month. He indicates that he currently consumes alcohol to the point of intoxication less than once a month. He only drinks in a safe environment with friends. (Government Exhibits 5, 6 and 7.)

Paragraph 3 (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 admitted allegations 3(a), 3(b), 3(d), 3(h) and 3(i), and denied allegations 3(c), 3(f) and 3(g) under this guideline.

Applicant has an extensive pattern of rule violations and reckless misconduct while in college. In September 2005, he violated his college's under age alcohol policy and was cited. In March 2006, he violated the college's no smoking policy. In September 2006, he was suspended from living on the college campus because drug paraphernalia was found in his dorm room. (Government Exhibit 5.)

Between October 2006, and January 2007, the Applicant was suspended from living in campus housing for violating the college's alcohol and smoking policies. As a result, he was ordered to complete a course on alcohol use and abuse. Applicant contends that on the evening in question, his roommates threw a party when he was out for the night. Campus policy holds all inhabitants of the room responsible for any violations, even though Applicant contends that he was not present. (Government Exhibit 5)

In November 2007, the Applicant was arrested for Driving Under the Influence of Alcohol. He pled guilty and was convicted of a lesser included offense of Driving While Impaired. At the time of his security clearance interview on January 2009, the Applicant expressed the intent to continue to use illegal drugs.

On July 6, 2009, the Applicant was unable to rule out the future use of illegal drugs. He stated that he does not intend to use illegal drugs in the future, but he has the desire to use them in the future. He now states that his desire to use illegal drugs has not existed for months. (Applicant's Reply to the FORM).

Applicant states that since graduating from college, his life has entirely changed. He has moved out of state. He is performing well on the job. He lives on his own, and has no desire to use any drug of any sort. His job and career have become more important to him, and he now realizes how illegal drug use can negatively effect his desire to succeed in business. Furthermore, Applicant states that in his opinion, and as a result of the two substance evaluations he underwent, that, he did not abuse any alcohol or drugs, and that he has never been addicted to any illegal substances. Although he still visits his friends out of state who use drugs, he does not use with them. (Applicant's Reply to the FORM).

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 G (Alcohol Consumption)

21. *The Concern.* Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

Conditions that could raise a security concern:

22. (a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

22. (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.

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.

Conditions 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 judgement, 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;

16.(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a while-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. This includes but is not limited to consideration of:

(3) a pattern of dishonesty or rules violation.

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 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, alcohol abuse, and personal 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 drug involvement (Guideline H), alcohol abuse (Guideline G), and poor personal conduct (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, G and E of the SOR.

The evidence shows that the Applicant used a variety of illegal drugs between 2003 and 2009. He used marijuana, LSD and MDMA after completing a security clearance application. Furthermore, just last year, the Applicant was unable to rule out the future use of illegal drugs. He now states that he does not intent to use illegal drugs in the future, but as recently as several months ago, had the desire to use them. 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* apply. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline H, Drug Involvement.

There is also a pattern of alcohol abuse that has not been mitigated, which includes numerous incidents of binge drinking in college. As recently as July 2009, Applicant admits to drinking to the point of intoxication on a monthly basis. Under Guideline G, 22. (a) *alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other*

incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent, and 22. (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent apply. There is no evidence in the record that any of the mitigating conditions apply. Accordingly, I find against the Applicant under Guideline G, Alcohol Consumption.

Finally, Applicant's repeated violations of college rules and regulations, his abuse of a number of illegal drugs, and his stated intention to use marijuana in the future, is misconduct that is criminal and reckless, and demonstrates unreliability and untrustworthiness. Under the particular facts of this case, his poor personal conduct is considered a significant security risk, which prohibits a favorable determination in this case. Under Guideline E, Personal Conduct, Disqualifying Conditions:

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, and 16.(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information 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. This includes but is not limited to consideration of: (3) a pattern of dishonesty or rules violation apply.

None of the mitigating conditions are applicable. 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. 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 he clearly does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline H (Drug Involvement), Guideline G (Alcohol Consumption), 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, 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.

Paragraph 2: Against the Applicant.

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

Paragraph 3: Against the Applicant.

- Subpara. 3.a.: Against the Applicant.
- Subpara. 3.b.: Against the Applicant.
- Subpara. 3.c.: Against the Applicant.
- Subpara. 3.d.: Against the Applicant.
- Subpara. 3.e.: Against the Applicant.
- Subpara. 3.f.: Against the Applicant.
- Subpara. 3.g.: Against the Applicant.
- Subpara. 3.h.: Against the Applicant.
- Subpara. 3.i.: 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