



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



In the matter of:)	
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SSN: -----)	ISCR Case No. 09-04233
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Department Counsel
For Applicant: *Pro Se*

March 31, 2010

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on March 10, 2009. On October 5, 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 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.

The Applicant responded to the SOR in writing on November 23, 2009, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on December 15, 2009. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on January 13, 2010, and he submitted a reply dated February 16,

2010, which was admitted without objection. The case was assigned to the undersigned for resolution on March 11, 2010. Based upon a review of the case file, pleadings and exhibits, eligibility for access to classified information is granted.

FINDINGS OF FACT

The Applicant is 30 years old and has a Bachelor's Degree. 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 in the SOR. He has a history of illegal drug use. He began using marijuana in 1998, that continued until July 2007. Applicant states that the bulk of his marijuana use occurred while in high school, from 1998 to 1999. He use marijuana every few months with friends. In total, the Applicant admits to using marijuana between 20 and 30 times. On some occasions, the Applicant purchased marijuana, but it was strictly for his use. In November 2000, at the age of twenty-one, the Applicant was diagnosed with cancer in his sinus cavity and from then until July 2001, he underwent daily radiation and chemotherapy and did not use any illegal drugs during that time. He then moved out of state and came away with a "you only live once attitude".

In 2003, the Applicant used cocaine for the first time. His girlfriend at the time introduced him to cocaine and he used it, never alone, but with her and her friends. From 2003 through July 2008, the Applicant used cocaine. During this period he was in college. Applicant used cocaine every couple of months during a five month period. Applicant admits to using cocaine between 10 and 20 times. The majority of his cocaine usage occurred in 2003 and 2004. Applicant also tried mushrooms on two occasions between 1998 and 2001. (Government Exhibit 3). The Applicant graduated from college in 2008 and stopped using illegal drugs. (Government Exhibit 3).

Applicant now no longer associates with individuals who use illegal drugs. He has recently completed his second bout with cancer and is undergoing treatment for a tumor. Once he beats cancer for the second time, his indicates that his singular goal is to maintain a successful career that will allow him to pay off his student loans and someday raise a family. (Government Exhibit 3).

Applicant submitted a letter of intent dated February 3, 2010, indicating that he swears never to use any illegal drug in the future. He understands that if he violates any provision set forth in DoD Directive 5220.6, he willingly agrees to have his security clearance automatically revoked. (Applicant's Reply to the FORM).

Letters of recommendation from the Applicant's direct supervisor and from a coworker indicate that the Applicant has developed a great deal of respect based upon

his wonderful attributes that include, professionalism, integrity, unwavering work ethic, excellent team player, positive attitude, dedication to the company, organization skills, rapid learning abilities, self supervision/discipline and multi-discipline technical prowess. Applicant is said to be easy to get along with and is an excellent problem solver. He has their highest recommendation for a position of trust. (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)

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;

Conditions 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;

(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 behavior 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."

CONCLUSION

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 introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guidelines H of the SOR. I have considered all of the evidence presented in this case, including the letters of recommendation, and the letter of intent signed by the Applicant. The Applicant has not used any illegal drug since 2008, over two years ago, and he has no intentions of ever using any illegal drug again. He now has a better understanding of the seriousness and negative effects of illegal drugs, namely how they can destroy your mind, your body and your career potential. He realizes that he used bad judgment during the period he used illegal drugs and is now committed to a drug free lifestyle. He has significantly matured since college, and no longer associates with illegal drug users. He has obviously increased his self-confidence and no longer needs to hang around with losers in society. Applicant has signed a statement of intent indicating that he will not use illegal drugs in the future, and if he does, his security clearance will be immediately revoked. This further demonstrates his commitment to a drug free lifestyle.

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 Conditions *26.(b) a demonstrated intent not to abuse any drugs in the future, such as: 26.(b).(1) disassociation from drug-using associates and contacts; 26.(b).(3) an appropriate period of abstinence, and 26.(b).(4) a signed statement of intent with automatic revocation of clearance for any violation* applies. Accordingly, I find for 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 30 years old, educated, intelligent and successful. He understands the responsibilities of an individual who has the privilege of holding a security clearance. He realizes the seriousness of illegal drug use and how negatively it can effect his life. He no longer uses illegal drugs, and is looking forward to a successful career and a good life. Under the particular facts of this case, the totality of the conduct set forth above, when viewed under all of the guidelines as a whole, support a whole person assessment of good judgement, trustworthiness, reliability, a willingness to comply with rules and regulations, and/or other characteristics indicating that the person may properly safeguard classified information.

This Applicant has demonstrated that he is trustworthy, and that he meets the eligibility requirements for access to classified information at this time. Accordingly, I find for the Applicant under Guideline H (Drug Involvement).

On balance, it is concluded that the Applicant has overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1.

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: For the Applicant.
Subpara. 1.a.: For the Applicant.
Subpara. 1.b.: For the Applicant.
Subpara. 1.c.: For the Applicant.
Subpara. 1.d.: For the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge