



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



In the matter of:)
)
) ISCR Case No. 09-07205
)
) SSN:)
)
)
) Applicant for Security Clearance)

Appearances

For Government: D. Michael Lyles, Esq., Department Counsel
For Applicant: *Pro se*

October 7, 2010

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the Government's security concerns under Guideline H, Drug Involvement and Guideline E, Personal Conduct. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On March 30, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, Drug Involvement and Guideline E, Personal Conduct. DOHA acted 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).

Applicant answered the SOR on April 19, 2010, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on June 10, 2010. The FORM was mailed to Applicant, and he received it on June 17, 2010. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit a reply. The case was assigned to me on August 11, 2010.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations stated in the SOR. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 29 years old. He is married and has two children. Since June 2007, he has worked as a mechanical assembler for a defense contractor. He served on active duty in the Army as an enlisted member from October 2000 until January 2007, and in the Army National Guard from January 2007 until January 2008. He received an honorable discharge.¹

Applicant's admitted conduct raised in the SOR includes: (1) using and purchasing cocaine between 2007 and May 2009, including while holding an interim security clearance as of April 14, 2009 (See SOR ¶¶ 1.a – 1.c, and SOR ¶ 2.b); (2) losing a job because he failed to report to management that he damaged a company vehicle by driving it after consuming alcohol (See SOR ¶ 2.a).²

In explanation, Applicant attributes his cocaine use to experiencing stress and because he associated with the wrong type of people. From April 2007 to September 2007, Applicant snorted cocaine approximately once or twice a month. He ingested about one gram each time he used cocaine. He bought the cocaine from a friend and they used it together. He stopped using cocaine from September 2007 until April or May 2009, because his use upset his wife and it was costing too much money. In April or May, 2009, he was given an amount of cocaine from someone at a bar and he snorted it. He held an interim security clearance at the time of this use. According to Applicant, this was his last use of cocaine. One reason he stopped using it, after this last use, was because his wife threatened to leave him if he used it anymore. Applicant claims he will not use cocaine or any other illegal drug again. He has not sought drug treatment or counseling and has not been diagnosed with drug addiction or dependence.³

In October 2007, Applicant was fired from his job because he failed to report an accident he had while driving a company vehicle. Applicant consumed approximately 10

¹ Items 1, 4.

² Items 4, 5.

³ *Id.*

beers in a three to four hour period on the night of the accident. He became intoxicated and hit another parked vehicle with the company vehicle he was driving. He did not know he hit the vehicle at the time. Once his company found out about the incident, he was immediately fired.⁴

Applicant states that he has changed his life for the better. The recent birth of daughter has changed his priorities. He now realizes the important things in his life are his family and his work.⁵

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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

⁴ *Id.*

⁵ Item 4.

grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to 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 Executive Order 10865 provides that 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;
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (g) any illegal drug use after being granted a security clearance.

Appellant used cocaine on a number of occasions including while holding a security clearance. He also admitted to buying cocaine. I find that all the above disqualifying conditions apply.

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

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment; and
- (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.

Applicant claims that he has not used any drugs since April or May 2009. That period of abstinence is insufficient to demonstrate Applicant's intent not to use in the future. This is particularly so since his history shows he used cocaine after a prior period on abstinence. Additionally, his use is recent and he has not convinced me that his use will not recur. Neither AG ¶ 26(a) nor (b) applies.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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 conditions are potentially applicable:

(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:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information:

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations; and,

(4) evidence of significant misuse of Government or other employer's time or resources; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Applicant's misuse of a company truck by driving while intoxicated and damaging a vehicle shows a lack of judgment. AG ¶ 16(d)(4) applies. Additionally, his use of cocaine while holding a security clearance created a vulnerability that called into question his suitability to protect classified information. AG ¶16(e) applies.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and especially considered the following:

(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.

Applicant's actions in repeatedly using cocaine and engaging in behavior detrimental to his former employer's interests, cast doubt on his overall reliability, trustworthiness, and good judgment. AG ¶ 17(c) does not 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 the 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 considered Applicant's service in the Army and Army National Guard and the concern he expressed for his family. However, I also considered that he used cocaine on multiple occasions, most recently while holding a security clearance, and that he abused an employer's trust by driving a company vehicle after consuming alcohol and damaging the vehicle. Applicant failed to provide sufficient evidence to mitigate the security concerns.

Overall the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline H, Drug Involvement, and Guideline E, Personal Conduct.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge