



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



In the matter of:)	
)	
-----)	ISCR Case No. 10-00898
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel
For Applicant: Stephanie N. Mendez, Esq.

December 30, 2010

Decision

LYNCH, Noreen A, Administrative Judge:

On June 4, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline H (Drug Involvement), Guideline F (Financial Considerations), and Guideline E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing. DOHA assigned the case to me on July 26, 2010. A Notice of Hearing was issued on September 10, 2010, and the case was heard on October 5, 2010. Department Counsel offered fourteen exhibits, which were admitted without objection as Government Exhibits (GE) 1-14. Applicant testified and presented one witness. He submitted exhibits AE A through P at the hearing, which were admitted. I kept the record open at Applicant's request, and he submitted AE Q through T, which were admitted into the record without objection. Based on a review of the pleadings, submissions, testimony, and exhibits, I

find Applicant failed to meet his burden regarding the security concerns raised. Security clearance is denied.

Findings of Fact

Applicant is a 39-year-old employee of a defense contractor. He graduated from high school in 1989. He enlisted in the U.S. Navy in November 1989 and served until December 2001. (Tr. 114). Applicant was in the Navy reserves for almost one year in 2002. He attended a technical college for several years. (AE E) Applicant is married and has two children. Applicant has held a security clearance since 1990. (Tr. 118) He has worked for his current employer since 2008. (Tr. 118)

Drug Involvement

Applicant used marijuana in high school during his senior year (1988). (Tr. 56) He also purchased and used marijuana on an intermittent basis from 2002 until 2007. He describes his most recent use of marijuana as inconsistent and "rare." (GE 4) He acknowledged that he used marijuana when he attended concerts (raves) in 2003-2004. He further elaborated that he knew drugs would be available at the concerts and that he used the marijuana to intensify the music experience. (Tr. 144) He also used marijuana during social gatherings at football games. (Tr. 145)

Applicant used Ecstasy and Mushrooms a "few times" after leaving the Navy in 2001 until 2004. (GE 4) He used the drugs when he attended concerts as noted above. (Tr. 62) He held a security clearance during that time. (Tr. 148)

On November 21, 2002, Applicant was arrested and charged with possession of marijuana. (GE 7 and Tr. 66) Applicant denies that it was an "arrest" because he was not placed in handcuffs. He was issued a ticket for the marijuana possession. He did not pay his fine. He failed to appear in court in January 2003. Applicant states that he did not receive any notice of an arrest warrant because he was in Japan. (Tr. 68) He claims that he did not know anything about the arrest warrant until he received the SOR. (Tr. 68)

Applicant acknowledged the illegal use of marijuana, mushrooms, and ecstasy in his March 2010 DOHA interrogatories concerning drugs. He claims he did not use any illegal drugs while in the Navy. However, he listed 2002 as a date "used" and he noted that he was in the Navy reserves in 2002. Applicant notes the presence of marijuana does not affect him. He has never sought counseling because he does not consider himself a drug user and "never used marijuana as an addictive drug." He also acknowledged that he bought marijuana and ecstasy "around 2002-2003." (GE 4)

Applicant signed a notarized statement of intent on June 25, 2010. (AE K) He also submitted a negative drug test result for pre-employment from February 2009. (AE J) He has never considered drug counseling because he does not believe he has a problem. (Tr. 159)

Applicant's wife testified that Applicant has never used illegal drugs in her presence. (Tr. 35) She explained that if Applicant used any illegal drugs, she would not stay in the marriage and she would take her children from him. She considers him to be an honest man. Although she was not married to him until 2007, she has known him as a friend since 1997.

Personal Conduct

Applicant completed a security clearance application (SCA) on June 9, 2003. He did not disclose his use of marijuana. He answered "No" to Question 24 concerning his police record. He states that he rushed through the SCA. (Tr.) He also did not list his 2002 arrest because he did not believe he was arrested. (Tr.) However, he did list his 1992 DUI. (GE) Applicant responded "No" to Question 27 about any use of illegal drugs and drug activity or illegal use while in a sensitive position. As to Question 29, Applicant also answered "No" concerning any involvement with illegal drugs during the last seven years.

Applicant completed an SCA in March 2007. He did not disclose any illegal drug use in response to Section 23. He also answered "No" to Section 23(d) concerning any arrests or convictions related to drugs. He did not list the 2002 arrest for possession of marijuana because he did not believe he was "arrested." (Tr. 70) He claims that he rushed through the application and that is why he answered "no" to the sections concerning illegal drug use. (Tr. 71)

Applicant responded "No" to Section 24 concerning use of illegal drugs and drug activity while holding a security clearance. He did not disclose his use of marijuana, mushrooms or ecstasy and the fact that he held a security clearance during that period of time.

Financial

Applicant was unemployed on various occasions. After leaving the military in 2001, he was unemployed for several months. (Tr. 57) He lost his job in 2002 for several months. (Tr. 119) Applicant was furloughed on several occasions during one position. (AE H and I) His civilian pay was less than his military pay. He reports that he initially earned less than \$13 an hour. (Tr. 121) In 2007, he married and his first child was born in 2008. (Tr. 27) Applicant and his wife also have an infant daughter. (Tr. 29) His wife works full-time and earns approximately \$16 an hour.

The SOR lists delinquent accounts totaling \$16,000. The credit reports confirm them. (GE 10-13) He disclosed his delinquent debts on his latest security clearance application. Some of the debts are the result of tuition that he could not pay while attending technical school. (Tr. 27) Applicant notes that he paid some small debts that are not listed on the SOR. He had a wage garnishment for 2003 state and federal taxes in 2007. (GE 9) Applicant believes the taxes are now paid. (Tr. 92) He believes he first obtained a credit report in 2004 and his total debt was \$22,000. (Tr. 123)

In 2007, Applicant acknowledged his debts to the investigator from OPM. He did not recognize some of the accounts, but he waited until July 2010 to dispute them or inquire about them. He stated that he did not have the “know how” to resolve his credit issues. (Tr. 126) He did not wish to file bankruptcy. He also submitted documentation that he paid the debt alleged in 1h. (AE Q-S)

Applicant intends to pay his debts. He is researching various debt consolidation plans. In July 2010, he sent certified letters to several creditors to inquire about the status of the debts. (AE L-N) He has not paid any other debts listed on the SOR. He explained that several debts are no longer listed on his latest credit report. (Tr. 77 and AE O)

Applicant's 2009 monthly net income was \$3,000. Applicant's wife's income is approximately \$ 1,780 a month. It would appear that there is a net remainder of \$1,150 in disposable income. (I) He has not received any credit counseling. (Tr. 86) Applicant has a budget. The week before the hearing, he contacted a credit solution company for guidance. (Tr. 139)

Applicant explained that he and his wife try to save but at times a vehicle repair or extra child care expenses occur. He is also paying on two student loans. (Tr. 136) He and his wife own two vehicles, but one is paid.

Applicant's manager describes him as a hard-working individual who is very punctual. (AE D) He is a reliable person. He is a devoted father and husband. (AE A-C).

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” An 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The United States Government (Government) must present evidence to establish controverted facts alleged in the SOR. 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. . . .”¹ The burden of proof is something less than a preponderance of evidence.² The ultimate burden of persuasion is on the applicant.³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

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

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

include: (a) Drugs are defined as mood and behavior altering substances, and

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and

(2) inhalants and other similar substances;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying:

(a) any drug abuse (see above definition);

(b) testing positive for illegal drug use;

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;

(e) evaluation of drug abuse or drug dependence by a licensed clinical social worker who, is a staff member of a recognized drug treatment program;

(f) failure to successfully complete a drug treatment program prescribed by a duly qualified medical professional;

(g) any illegal drug use after being granted a security clearance; and,

(h) expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.

Applicant used marijuana, ecstasy and mushrooms. He first used marijuana in 1989 and intermittently continued until 2007. He experimented with mushrooms and ecstasy during the years 2002 to 2007, during which time he held a security clearance. He never disclosed any information to his employer about the illegal drug use. AG ¶ 25(a) and (g) apply.

AG ¶ 26 provides conditions that could mitigate security concerns:

(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;

(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; and,

(4) a signed statement of intent with automatic revocation of clearance for any violation;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and,

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant's last use of any illegal drug was in 2007. He signed a notarized statement of intent in 2010. This occurred after his security clearance investigation. He does not believe he has a problem with illegal drugs and has not sought any counseling. Considering his history of illegal drug use, there is doubt about future use, and not sufficient passage of time for rehabilitation. None of the above mitigating conditions apply.

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-

control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information." It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant currently has delinquent debts in the amount of \$16,000. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant was unemployed for several months in 2002-2003. He was also unemployed for a short time in 2008 and 2009. After that he was steadily employed. This may have exacerbated Applicant's ability to meet his obligations, but he did not address the delinquent debts when he learned about them in 2004. He provided no information about his efforts to otherwise meet those obligations during that period. He has not provided documentation to show he has made any payments on his delinquent accounts other than one account. Consequently, Financial Considerations Mitigating Condition (FCMC) AG ¶ 20(a) (the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment) does not apply.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation) and the individual acted responsibly under the circumstances) does not apply. As noted, Applicant had short periods of unemployment. He noted that his initial financial problems stem from his entry into the civilian work world. These events, no doubt, impacted his finances. However, there is no evidence that he acted reasonably under the circumstances. He allowed the delinquent debts to remain unpaid. There is no record of any attempts to resolve his debt until after he received the SOR.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant has not provided evidence of any consistent payment plans. He asserts that he has contacted several debt consolidation programs and has contacted his creditors by phone. He paid one account. He intends to pay his debts and is now trying to seek information about consolidation. However, at this time a concrete plan is still in the future. His failure to provide information about financial counseling obviates the applicability of FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control).

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. Under AG ¶ 16(a), a disqualifying condition exists when there is "deliberate omission, concealment, or falsification of relevant facts from any personnel questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security eligibility or trustworthiness, or award fiduciary responsibilities." Under AG ¶ 16(b) a disqualifying condition exists when "deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative."

Applicant failed to disclose pertinent information on his 2003 and 2007 SCAs. His explanation that he rushed through or did not believe that his 2002 possession was an actual arrest are not credible. He took the time to list a 1992 DUI but did not list any use of any illegal drugs. His behavior and personal conduct are disqualifying as they raise questions about his judgment, reliability, truthfulness, and willingness to comply with the law.

After considering the mitigating conditions outlined in AG ¶ 17, I conclude that none of them apply. Applicant did not make prompt or good-faith efforts to correct his falsifications or concealments. He provided no information that indicates he was ill-advised. The intentional omissions occurred in 2003 and 2007, and are too recent and serious to be mitigated by the passage of time so far. I have serious doubts about his good judgment and reliability. He has not provided information in this record to show that he has met his burden of proof for his personal conduct.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the “whole-person” factors. Applicant is 39 years old. He served in the Navy from 1989 until 2001. He also acknowledged that he was in the reserves in 2002 for almost one year. During that time, he used marijuana. Moreover, Applicant experimented with mushrooms and ecstasy while holding a security clearance. Applicant currently has unresolved financial difficulties, despite his good intentions. Part of his financial difficulties stem from a time when he admittedly was unemployed, but he has not acted reasonably under the circumstances. Applicant’s claimed last illegal drug use was in 2007, but I have doubts about his reliability. He did not disclose material facts concerning the arrest in 2002 for possession of marijuana nor did he note at any time in 2003 or 2007, his illegal use of other drugs. He has not met his burden in this case.

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 through 1.d:	Against Applicant
Paragraph 2., Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a through 2.e:	Against Applicant
Paragraph 3, Guideline: F	AGAINST APPLICANT
Subparagraphs 3.a through 3.n:	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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge