



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 10-03115
)
)
Applicant for Security Clearance)

Appearances

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

June 22, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QUIP) on December 16, 2009. On January 31, 2011, 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 revised 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.

Applicant answered the SOR in writing on March 4, 2011, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on April 4, 2011. A notice of hearing was issued on April 19, 2011, scheduling the hearing for May 5, 2011. The Government offered two exhibits, referred to as Government Exhibits 1 and 2, which were received without objection. Applicant presented one exhibit, referred to Applicant's Exhibits A, which was admitted without objection. He also testified on his own behalf. The record remained open until close of business on May 20, 2011, for receipt of additional documentation. The Applicant did not submit any Post-Hearing Exhibits. The transcript of the hearing (Tr.)

was received on May 16, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

The Applicant is 23 years old and single. He has a Bachelor's Degree in Business Finance and Marketing. He is employed by a defense contractor as a Financial Analyst, 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 admits the factual allegations set forth under this guideline. He grew up in a small city where he lived until the age of eighteen. He graduated from high school in 2005, and then attended college on an athletic scholarship for four years. While in college, he used marijuana for the first time, at the end of his senior year, in April or March 2009. He explained that while on an athletic scholarship, he was subject to drug testing and he did not want to jeopardize his scholarship by using illegal drugs. During his last year of college and after the season was finished, marijuana was offered to him, and he decided to experiment with it while at a friend's house. (Tr. p. 19.) He continued to use marijuana an additional 10 to 15 times in total. On one occasion, he purchased it for his own use from a friend of a friend. (Tr. p. 34.) His marijuana use ended in May 2009, about the time he graduated from college. He knew that the use of marijuana was illegal. (Tr. p. 26.)

The Applicant also used Adderall, a prescription drug, which he obtained without a prescription, during college for several months, from March 2009 to May 2009. The Applicant testified that it was fairly common for students in college to take Adderall to help them concentrate while studying. The Applicant stated that he used it to study for a test. (Tr. p. 33.)

In November 2009, the Applicant started working for a defense contractor. His employer administered a drug test and he passed. Two or three weeks later, he used marijuana on one occasion in November 2009, even though he realized that it was against company policy to use illegal drugs. He admits that his use of marijuana was a huge lapse in judgment. (Tr. p. 25.) In December 2009, he completed a security clearance application and in response to question 23(a), revealed that he had used marijuana in November 2009. (Government Exhibit 1.) Realizing that mistakes of the past have consequences, the Applicant testified that he has no intention to ever use illegal drugs again. (Tr. p. 48.)

A Statement of Intent was submitted by the Applicant that indicates that he will never use any marijuana or any other illegal drug again. He will also not associate with anyone who used illegal drugs. (Applicant's Exhibit A, and Tr. p. 40-42.)

The Applicant stated that when he used marijuana in November 2009 he was under stress and going through some personal struggles. A friend of his passed away,

and the Applicant had just started his new job that he was not entirely acclimated to, and that caused additional stress. He states that he has matured over the past two years. He now exercises, plays golf and associates with different people now. He has two roommates and neither of them uses illegal drugs. He has learned from his mistakes of the past and plans to avoid mistakes in the future at all costs. (Tr. p. 48.) He understands the importance and the responsibilities associated with holding a security clearance and is prepared to uphold those responsibilities.

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.(b) illegal drug possession, including cultivation, procession, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Conditions that could mitigate security concerns:

26.(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;

26.(b) a demonstrated intent not to abuse any drugs in the future, such as;

(1) disassociation from drug-using associates and contacts;

(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 and surrounding circumstances;

- 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."

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 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

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 Guideline H. The evidence shows that the Applicant made a conscious decision to use marijuana, and Adderall without a prescription, while in college, and marijuana on one occasion after being hired by a defense contractor, knowing that it was illegal and against company policy. This conduct demonstrates poor judgment, untrustworthiness and unreliability. The Applicant acknowledges his serious lapse in judgment and promises never to use illegal drugs again. Since November 2009, he has remained drug free. He states that he has not used any illegal drugs for over a year and a half, and has signed a Letter of Intent indicating that he has no intent to ever use any illegal drugs in the future. His use of illegal drugs was clearly experimental in nature. Furthermore, he was candid and open when he revealed his illegal drug use on his security clearance application in December 2009 that ultimately brought this matter to the Government's attention. Under Guideline H, Drug Involvement, Disqualifying Conditions, 25.(a) *any drug abuse*, and 25.(b) *illegal drug possession, including cultivation, procession, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia* apply. However, Mitigating Conditions 26.(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 26.(b) *a demonstrated intent not to abuse any drugs in the future, such as: (4) a signed statement of intent with automatic revocation of clearance for any violation* also apply. I find that the Applicant's past use of illegal drugs was experimental, not recent and has no current security significance. 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. Although the Applicant made some serious mistakes by using illegal drugs in his past, he has significantly matured since then. His lifestyle has changed from a college student to a career professional. He is now a productive member of the DoD work force, and no longer associates with drug users. He resides with other professionals and has more responsibility. In the event that the Applicant uses any illegal drugs in the future, his security clearance will be revoked. 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 good judgement, trustworthiness, reliability, and 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 does meet 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 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: For the Applicant.
- Subpara. 1.a.: For the Applicant.
- Subpara. 1.b.: For the Applicant.
- Subpara. 1.c.: 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