



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-05346

Appearances

For Government: Jeff Nagel, Department Counsel
For Applicant: Kystal M. Limon, Attorney At Law

March 3, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on February 3, 2010. (Government Exhibit 1.) On October 27, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines H, E and J 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 on November 17, 2010, and she requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on January 6, 2011. A notice of hearing was issued that same day, and the hearing was scheduled for January 20, 2011. At the hearing the Government presented two exhibits, referred to as Government Exhibits 1 and 2. The Applicant called two witnesses and presented twenty-two exhibits, referred to as Applicant's Exhibits A through V. She also testified on her own behalf. The official transcript (Tr.)

was received on January 28, 2011. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 29 years old and has a Bachelor of Science Degree in Electrical Engineering, and a Master of Science Degree in Library and Information Science. She is employed by a defense contractor as a Program Analyst and is applying for a security clearance in connection with her employment.

Paragraph 1 (Guideline H - Drug Involvement). The Government alleges that the Applicant is ineligible for clearance because she abuses illegal drugs.

The Applicant admitted each of the allegations set forth under this guideline. (Applicant's Answer to the SOR.) From 1998 to 2003, the Applicant attended a University and received her undergraduate degree. From 2003 to 2005, she attended graduate school, and received her Master's degree. She was an excellent student, with a great academic record, who received many accolades and scholarships for her academic achievements. She was ranked as one of the top ten students for scholarships and community involvement. She was a diligent and intense student who studied day and night. Following graduation, she took some time off, traveled and then started working for another defense contractor from January 2006 to May 2009. She began working for her current employer in May 2009. The Applicant was granted a security clearance in June 2007. (Tr. p. 7.)

The Applicant used marijuana twice, after having been granted a security clearance. The first time she used it was in late 2007. The second time was about two weeks to a month later. She explained that her husband's friend gave him some marijuana and he offered it to the Applicant. The Applicant decided to use it with husband because he asked her to. (Tr. p. 14.) As to why she decided to use marijuana then, she stated that in August 2007, she got married and they were young, dumb and alone. (Tr. p. 15.) The Applicant indicates that these two times were the first and only times she and her husband have ever used marijuana. She testified that she understood that marijuana was illegal, but chose to use it anyway. She has not used any illegal drug since 2008, and she has no intentions of ever using any illegal drug again. The Applicant submitted the results of a drug urinalysis she voluntarily took on January 12, 2011 that were negative for any illegal substance. (Applicant's Exhibit U.)

The Applicant provided a notarized statement of intent to never use illegal drugs again. In the event that she does, she consents to automatic revocation of her security clearance. (Applicant's Exhibit C.)

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because she has engaged in conduct involving questionable judgment, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations.

The Applicant denied each of the allegations set forth under this guideline. (Applicant's Answer to SOR.) She completed a security clearance application dated February 3, 2010. Question 23(a), of the application asked her in the last seven years, had she illegally used any illegal substance? The Applicant answered, "NO." This was a false answer. The Applicant failed to disclose her marijuana use. She testified that she was scared, embarrassed and ashamed. She had just started a new job and did not want to jeopardize it. (Tr. pp. 17 and 34.)

Question 23(b) of the same application asked her if she had ever illegally used a controlled substance while possessing a security clearance; while employed as a law enforcement officer, prosecutor, or courtroom official; or while in a position directly and immediately affecting the public safety. The Applicant answered, "NO." This was a false answer. The Applicant failed to disclose her marijuana use. She stated that she had emotional baggage and just panicked. (Tr. p 18.)

The Applicant was interviewed by an authorized investigator for the Department of Defense on February 16, 2010. During the interview, the Applicant denied using any illegal drug or controlled substances. The Applicant failed to disclose her marijuana use. She explained that the same reasoning for not disclosing her marijuana use to the investigator carried over from the questionnaire. She had bad feelings about it, but it was her reaction. (Tr. p. 20.)

It was not until her second interview with the investigator when the Applicant was asked again if she used illegal drugs that she admitted using marijuana. The Applicant stated that she admitted her drug use because her husband told the investigator about it. (Tr. pp. 21, 36 and 42.) She testified that if asked the questions again, she will tell the truth and admit her drug use. (Tr. pp. 23 and 39.) She has matured since then and now realizes the implications of her actions.

Paragraph 3 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because she has engaged in criminal conduct.

The Applicant denied the allegation set forth under this guideline. (Applicant's Answer to SOR.) The Applicant deliberately falsified her security clearance application and lied to an authorized DoD investigator by denying her illegal drug involvement. This is a violation of Title 18, United States Code, Section 1001, a felony.

Mitigation

Testimony from the Applicant's manager that hired her, and who is her immediate supervisor, indicates that the Applicant is considered competent, intelligent, trustworthy and honest. She is described as an individual with integrity. (Tr. pp. 15-37.)

A letter of recommendation from the same manager, attests to her personal reliability and dependability, initiative, integrity, honesty, flawless performance and high aptitude. He has recently received two separate commendations for her work performance. The Applicant is highly recommended for a position of trust. (Applicant's Exhibit A.)

Testimony from a former classmate and good friend consider the Applicant to be an individual who is truthful and honest. (Tr. pp. 38-50.) A letter of recommendation from the same former classmate and friend of the Applicant describes the Applicant as helpful, patient, responsible and trustworthy. The friend has never known the Applicant to lie. The Applicant is recommended for a position of trust. (Applicant's Exhibit B.)

Applicant's performance evaluations for 2006, 2009 and 2010 from two different employers reflect positive job performance ratings. (Applicant's Exhibits S, R, Q and P.)

The Applicant received an Outstanding Service Award in December 2010 for her productivity and dedicated service on the job. (Applicant's Exhibit V.)

Email correspondence from the customers concerning the Applicant's work performance is complimentary and most favorable. (Applicant's Exhibits D and E.)

The Applicant received various awards and recognition for her academic excellence and student leadership while in college. (Applicant's Exhibits F, G, H, K, L and M.)

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;

25.(g) any illegal drug use after being granted a security clearance.

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.(a) a deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

16.(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Conditions that could mitigate security concerns:

None.

Guideline J (Criminal Conduct)

30. *The Concern.* Criminal activity creates doubt about a person's judgement, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

Conditions that could raise a security concern:

31.(a) a single serious crime or multiple lesser offenses;

31.(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

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, dishonesty and criminal 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 her 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), dishonesty (Guideline E), and criminal conduct (Guideline J). 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 her 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, E and J of the SOR.

The evidence shows that the Applicant used marijuana on two occasions, as recently as 2008, after having been granted a DoD security clearance. 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*, and 25.(g) *any illegal drug use after being granted a security clearance* apply. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline H, Drug Involvement.

Furthermore, the Applicant deliberately provided false information on her security clearance application in response to questions about her drug use and during her interview with an authorized DoD investigator concerning her drug involvement. There is no excuse for this misconduct. The Government relies on the representations of its defense contractors and must be able to trust them in every instance. The Applicant cannot at this time be deemed sufficiently trustworthy. In fact, she has demonstrated unreliability and untrustworthiness. Under the particular facts of this case, her 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.(a) *a deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or*

status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities and 16.(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative apply. None of the mitigating conditions are applicable.

The Applicant's deliberate intention to conceal this information from the Government on her security clearance application and from a DoD investigator during her background interview is a violation of Title 18, United States Code, Section 1001, a felony. Under Guideline J, Disqualifying Conditions 31.(a) *a single serious crime or multiple lesser offenses* and 31.(c) *allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted* apply. None of the mitigating conditions are applicable. Consequently, I find against the Applicant under Guideline E, Personal Conduct and Guideline J, Criminal Conduct.

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. The Applicant is an intelligent young woman with obvious great potential. To start out her career with mistakes so serious is disappointing. Her marijuana use after having been granted a security clearance, and her deliberate falsifications on her security clearance application and to an investigator, are indicators that preclude her from security clearance eligibility at this time. 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 she is not trustworthy, and she does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline H (Drug Involvement), Guideline E (Personal Conduct and Guideline J, (Criminal Conduct.)

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing her 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.

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.

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