



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 11-09285  
 )  
Applicant for Security Clearance )

**Appearances**

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

June 19, 2013

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (E-QIP) on August 19, 2010. (Government Exhibit 1.) On December 10, 2012, the Department of Defense (DoD) pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, (as amended), issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines H and E for Applicant. The SOR set forth the reasons why DoD adjudicators could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR on December 26, 2012, and he requested an administrative hearing before an Administrative Judge. This case was assigned to the undersigned on February 19, 2013. A notice of hearing was issued on April 26, 2013, and the hearing was scheduled for May 17, 2013, by video-conference. At the hearing the Government presented four exhibits, referred to as Government Exhibits 1 through 4, which were admitted without objection. Applicant presented one exhibit, referred to as Applicant's Exhibit A, which was admitted without objection. He called two witnesses and testified on his own behalf. The record remained open until close of

business on May 27, 2013, to allow Applicant to submit additional documentation. He submitted three Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A through C, which were admitted without objection. The official transcript (Tr.) was received on June 4, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **FINDINGS OF FACT**

Applicant is 29 years old and unmarried. He has a Bachelor's Degree in Electrical Engineering and a Bachelor's Degree in Applied Mathematics. He is employed with a defense contractor as a Systems Engineer and is seeking to obtain a security clearance in connection with this employment.

The Government opposes Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

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

Applicant admitted each of the allegations set forth in the SOR under this guideline. After graduating from high school, he attended college, and in December 2001, he joined the Army National Guard. He held a security clearance, and served honorably for six years until December 2007 when he was discharged. While in the Army National Guard, Applicant received the Army Commendation Medal. (Applicant's Post-Hearing Exhibit B.) Applicant began his current employment in September 2010.

In February 2007, a random urinalysis was conducted by the Army National Guard during a drill weekend. Applicant tested positive during this urinalysis for cocaine. He explained that although he has no real excuse for this one-time cocaine use, at the time, his family life was very troubled. His father, who was addicted to crystal methamphetamine, became extremely violent and unpredictable. So much so, that his mother ended up going to an abuse shelter, and his sister moved out with a friend. Applicant and his father lived in the house together at some point, but Applicant was afraid of his father because of his serious temper. To avoid his father, Applicant lived in his car. In 2007, Applicant's father left the house. Applicant moved back into the house and was cleaning out his father's stuff when he found a small bag of cocaine. He tried it one time. After using it, Applicant knew he had made a big mistake and did not like the effects of the drug. Applicant does not understand why he used it. He admits that he has no excuse for using his father's drugs, as he knows that drugs have ruined his family and caused all of them much pain.

Applicant had never used any other illegal drug besides the one time cocaine use described above. He does not like illegal drugs and he has no intentions of ever using them in the future.

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

Applicant has a history of traffic violations, infractions, charges and arrests discussed below. In August 2003, Applicant was charged with Driving Under the Influence of Alcohol. Applicant stated that he had consumed one beer and then went out to a club with friends. It was his birthday, and he drove down the wrong way on a one-way street while looking for parking. (Tr. p. 59.) The charge was dismissed without prejudice after he completed 30 hours of community service, and his drivers license was suspended for three months

In August 2004, Applicant was arrested for Operating a Vehicle While Intoxicated and Driving on a Suspended License. Applicant explained that he had consumed two or three beers at a bar, and then walked back to his car. Some trouble makers were trying to start a fight and break his car window. Applicant sped off and called the police. The trouble makers in their car followed the Applicant's car and hit him from behind, which totaled his car. At the time of the impact, the police were coming toward the Applicant's car and thought he was the culprit. Applicant was immediately arrested and charged. Applicant was administered a breathalyzer and passed it. Applicant explained that he had a suspended license at the time, but was allowed to drive to and from work at the National Guard. Applicant did not drive his car to the bar that evening. His friend drove. (Tr. p. 62.) The charges were dismissed.

In August 2006, Applicant was charged with (1) Speeding, and (2) Illegal Tint. Applicant states that he was going 10 to 15 miles over the speed limit and his windows had too dark a tint on them. He has since fixed this problem. (Tr. pp. 57-58.) He was found guilty and fined.

In March 2008, Applicant charged with (1) Speeding, and (2) Driving on a Suspended License. In July 2008, a warrant was issued for Applicant's arrest for Failure to Appear. Applicant claims that he never received the ticket in the mail because the documentation was sent to his home address. At the time, Applicant was attending college in another state. (Tr. p. 52.) Applicant was found guilty and fined. The warrant was recalled after Applicant paid the fine. (Tr. p. 55.)

Applicant completed his security clearance application, an Electronic Questionnaires for Investigations Processing, dated August 19, 2010. (Government Exhibit 1.) The Government contends that the Applicant intentionally concealed material information from the Government when answering the questions in Section 22. Question 22(e) asked him if he had ever been charged with any offenses related to alcohol or drugs? The Applicant answered, "NO." This was a false answer. He failed to disclose his charges and offenses related to alcohol in August 2003 for Driving Under the Influence, and in 2004 for Operating a Vehicle While Intoxicated.

Applicant explained that when he met with the DoD investigator he told her everything. He does not know why he would answer the way he did on the security clearance application in response to his police record. He was certainly not trying to hide or conceal anything from the Government. (Tr. p. 66.)

Applicant expressed remorse for his past misconduct and realized that for many years he was a very immature individual, who simply tried to ignore his many problems. He has turned away from the bad influences in his life and has become much more responsible. Since 2007, he has greatly matured as a person. He understands that he must obey the law and he plans to do that. He has completed his Bachelor's Degree in Electronic Engineering and obtained a reputable job. He is now a law-abiding citizen and he plans to get back into the military in the future.

Two witnesses testified on behalf of the Applicant. The Project Manager who recruited and hired the Applicant, and who has observed his progress since September 2010; and a professional colleague, who is a retired Sailor, served in Operation Enduring Freedom, and has had a top secret clearance since 1990, and who recommended the Applicant for another job, each testified that Applicant is extremely reliable and trustworthy and highly recommend him for a security clearance. (Tr. pp. 27-40.)

Applicant's performance appraisals for 2010, 2011, and 2012 reflect overall ratings of "meets expectations". (Applicant's Post-Hearing Exhibit A.)

Letters of recommendation submitted on behalf of the Applicant from his past supervisor, professional colleagues, coworkers and friends who have witnessed the Applicant's transformation, indicate that Applicant is considered to be an exemplary employee who has an impressive skill level, a commendable work ethic, and a desire to make a positive difference in his life. This is evidenced by him leaving his old neighborhood, refraining from debauchery, and associating with people who provide a positive influence in his life. He is said to be a hardworker and team player who has good character, is friendly, humble, loyal and uses good judgment. His mistakes of the past do not show his true character. He is considered a model citizen who has turned away from bad influences in life and become very responsible. (Applicant's Post-Hearing Exhibit C.)

## **POLICIES**

Enclosure 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.(b) testing positive for illegal drug use; and

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

#### 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 judgement; and

26.(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, and (3) an appropriate period of abstinence.

### 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.

#### Condition that could raise a security concern:

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 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 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 adverse to an applicant 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 instances of drug involvement, criminal conduct, and falsification, which 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 or her a security clearance.

In this case the Government has met its initial burden of proving that Applicant has been involved in illegal drugs (Guideline H). This evidence indicates possible poor judgment, unreliability and untrustworthiness on the part of Applicant. Because of the scope and nature of Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

The evidence shows that Applicant used cocaine on one occasion in 2007. He had not used it before or since then, and he has no intentions of ever using it in the future. For the past six years Applicant has been completely drug free and has demonstrated great maturity. He has completed a second Bachelor's Degree, is working full time, and performing well on the job. He is commended for his favorable lifestyle changes and is encouraged to continue with his drug free lifestyle. Under Guideline H, Drug Involvement, Disqualifying Conditions 25.(a) *any drug abuse*, 25.(b) *testing positive for illegal drug use*, and 25.(g) *any illegal drug use after being granted a security clearance* apply. Mitigating Condition 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 judgement*, and 26.(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, and (3) an appropriate period of abstinence* also apply.

There is sufficient evidence of drug rehabilitation. Considering all of the evidence, Applicant has introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case. Accordingly, I find for Applicant under Guideline H, Drug Involvement.

The evidence also shows that Applicant's pattern of reckless and illegal misconduct that occurred between 2003 and 2008, involving traffic violations, infractions, charges and alcohol arrests has stopped. For the past five years, Applicant has demonstrated that he can and will obey the law. He has discontinued his reckless lifestyle and his misconduct is now a thing of the past. In addition, the Applicant did not deliberately conceal information about his police record from the Government on his security clearance application. Clearly the Applicant did not answer the questions accurately but there is insufficient evidence in the record to show that it was done with

the intention of concealing information from the Government. Applicant was careless but not deceitful. Accordingly, Guideline E (Personal Conduct) is found for the Applicant.

I have also considered the “whole-person concept” in evaluating Applicant’s eligibility for access to classified information. 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, candor, and a willingness to comply with rules and regulations, and/or other characteristics indicating that the person may properly safeguard classified information.

I have considered all of the evidence presented, including Applicant’s favorable letters of recommendation, favorable performance appraisals, and his favorable work history. They mitigate the negative effects his drug involvement and personal conduct can have on his ability to safeguard classified information. On balance, it is concluded that Applicant has overcome the Government’s case opposing his request for a security clearance. Accordingly, the evidence supports a finding for Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the SOR.

### **FORMAL FINDINGS**

Formal findings For or Against Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

- Paragraph 1: For Applicant.
- Subpara. 1.a.: For Applicant.
- Subpara. 1.b.: For Applicant.
- Subpara. 1.c.: For Applicant.
  
- Paragraph 2: For Applicant.
- Subpara. 2.a.: For Applicant.
- Subpara. 2.b.: For Applicant.
- Subpara. 2.c.: For Applicant.
- Subpara. 2.d.: For Applicant.
- Subpara. 2.e.: For Applicant.
- Subpara. 2.f.: For Applicant.
- Subpara. 2.g.: For 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 Applicant. Eligibility for access to classified information is granted.

Darlene Lokey Anderson  
Administrative Judge