



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



In the matter of:)	
)	
)	ISCR Case No. 11-09929
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Department Counsel
For Applicant: *Pro Se*

June 29, 2012

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Questionnaires for National Security Positions dated September 10, 1997, and May 19, 2008. (Government Exhibits 2 and 4.) On a date uncertain, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines H and E 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) effective within the Department of Defense after September 1, 2006.

The Applicant responded to the SOR on April 4, 2012, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on May 25, 2012. A notice of hearing was issued May 30, 2012, and the hearing was scheduled for June 14, 2012. At the hearing the Government presented eight exhibits, referred to as Government Exhibits 1 and 8. The Applicant presented four exhibits, referred to as Applicant's Exhibits A through D. He also testified on his own behalf. The official transcript (Tr.) was received on June 25, 2012. Based upon a

review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 63 years old and has a Ph.D in Applied Science and Physics. He is employed by a defense contractor as a Research Scientist 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 admitted each of the allegations set forth under this guideline. (Applicant's Answer to the SOR.)

The Applicant began working for his current employer in 2001. For the past thirty-one years he has worked for various government contractors. He held a Q-clearance from Department of Energy from 1978 to 1988, and a secret clearance from DoD from 1988 to 2009. He is now eligible to retire, but plans to work four or five more years before doing so.

While in graduate school, from 1982 to 1985, the Applicant took prescription diet pills that were not prescribed to him, but were prescribed to his friend. The pills are an appetite suppressant and known to effectively control weight loss. He discontinued taking them in 1985 or 1986.

Between 2002 and 2009, the Applicant used marijuana two to four occasions at social settings where it would be passed around. It was typical for him to take a puff of the marijuana cigarette and then pass it on. (Tr. p. 30.) The Applicant testified that when he used marijuana he made a knowing and conscious decision to ingest it. (Tr. p. 42.) He also knew that the use of marijuana was illegal and that it was against his company's policies. He stated that because his use of illegal drugs was infrequent, minor and irrelevant that it was not of concern. (Tr. pp. 41 and 50.)

In 2007, the Applicant signed a document for Program Special Access indicating that he understood DoD and company policy that prohibits the use of illegal drugs. (Tr. p. 51.) During an interview with a DoD investigator in July 2008, the Applicant did not disclose his use of amphetamines and marijuana. (Tr. p. 55.) In April 2009, he underwent a polygraph examination. In November 2009, his special access was revoked.

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.

The Applicant denied each of the allegations set forth under this guideline. (Applicant's Answer to SOR.) He completed a Questionnaire for National Security Positions dated September 10, 1997. (Government Exhibit 2.) Question 24(b), of the application asked him if he has ever illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a position directly or immediately affecting public safety? The Applicant answered, "NO." This was a false answer. The Applicant failed to disclose the fact that he had used amphetamines, (prescription drugs) that were not prescribed to him while possessing a security clearance.

The Applicant completed another Questionnaire for National Security Positions dated May 19, 2008. (Government Exhibit 4.) Question 24(a) of the application asked him if since the age of 16 or in the last 7 years, whichever is shorter, he had he illegally used any controlled substance, for example, "marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.) amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogens (LSD, PCP, etc) or prescription drugs?" The Applicant answered, "NO."

Question 24(b) of the application asked the Applicant if he had he ever illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a position directly or immediately affecting public safety? The Applicant answered, "NO." These were false answers. The Applicant failed to disclose the fact that he had used amphetamines, (prescription drugs) that were not prescribed for him and marijuana, while possessing a security clearance.

As mentioned above, as part of his security clearance investigation, in April 2009, the Applicant underwent a polygraph examination. Just prior to the administration of the exam, the Applicant told the examiner that he had illegally used amphetamines and marijuana. The Applicant testified that the reason he did not reveal his use of prescription drugs and marijuana use earlier on his security clearance applications is because he did not take the time or ask the questions he should have with careful reading and understanding. (Tr. pp. 33 -34.)

Mitigation

A letter of recommendation from the Applicant's manager dated June 8, 2012, indicates that the Applicant, who has worked for his company since 2001, is a conscientious worker who is very reliable and who successfully meets his commitments on the job. He has good technical judgment and has become a technical leader in the organization. He has demonstrated high ethical standards and is recommended for a security clearance. (Applicant's Exhibit A.)

Applicant's performance evaluation from January 1, 2011, through December 31, 2012 reflects that the Applicant has either "met expectations" or "exceeds expectations" in every category. His manager indicates that the Applicant is performing at or above expectations. He also cites that the Applicant had an outstanding year on various

projects to which he was assigned and led them to their successful completion. (Applicant's Exhibit B.)

Excerpts from the Applicant's associate technical fellowship package indicates that as a candidate he was admired and respected by his supervisors, professional colleagues and peers at his company. His impressive capabilities as an Engineer are noted in detail. He is described as having diverse capabilities including the inherent ability to pull together large complex projects as the technical lead in a cohesive manner. He has been very innovative in seeking solutions to nearly impossible material and processing challenges. His knowledge and understanding, attention to detail, and exceptional creativity has been a great asset to the organization. On a personal level, he is honest, open and authoritative. (Applicant's Exhibit C.)

The Applicant has received a number of awards, commendations and certificates of appreciation from his employers recognizing his exceptional performance on the job. (Applicant's Exhibit D.)

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.

Condition 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;

Condition 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 and dishonesty 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 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), and dishonesty (Guideline E). 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 not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government’s case under Guidelines H and E of the SOR.

The evidence shows that the Applicant illegally used amphetamines that were not prescribed to him from 1982 to 1985, and marijuana on at least two to four occasions between 2002 to 2009, while possessing a DoD security clearance. In 2007, he signed

a security document that stated he knew that it was illegal and against company policy to use illegal drugs. He made a conscious decision to use illegal drugs and has intentionally disregarded the law and DoD policy. Although he has not used illegal drugs in three years, his judgement is so warped that it raised serious security concerns. 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 concealed his illegal use of prescription drugs and marijuana on his security clearance applications in response to questions about his drug history. 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. It was only when he met with the polygrapher that he revealed his illegal drug use. The Applicant made no prompt, good faith effort to correct his mistakes before being confronted by the polygrapher. The Applicant cannot at this time be deemed sufficiently trustworthy. In fact, he has demonstrated unreliability and untrustworthiness. Under the particular facts of this case, his poor personal conduct is considered a significant security risk, which prohibits a favorable determination in this case. Under Guideline E, Personal Conduct, Disqualifying Condition 16.(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* applies. None of the mitigating conditions are applicable.

I have also considered the “whole-person concept” in evaluating the Applicant’s eligibility for access to classified information. The Applicant is not a young, inexperienced scientist. He has worked for the defense industry for thirty one years, has many years of experience, holds a Ph.D in Physics, and understands the requirements of holding a security clearance. He should be a role model for those less experienced in the industry. Instead, he has chosen to use illegal drugs after having been granted a security clearance, and has deliberately falsified his security clearance applications. These are indicators of poor judgment and unreliability that preclude him from security clearance eligibility at this time. There is no excuse for this illegal conduct.

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.

A security clearance is a privilege, not a right. In order to meet the qualification for access to classified information, it must be determined that the Applicant is and has been sufficiently trustworthy on the job and in his everyday life to adequately protect the

government's national interest. Based upon the conduct outlined here, this Applicant has demonstrated that he is not trustworthy, and he does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline H (Drug Involvement), and Guideline E (Personal Conduct).

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his 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 and 2 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.

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