



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



In the matter of:)
)
) ISCR Case No. 11-11283
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

06/18/2012

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for a security clearance to work in the defense industry. Applicant admittedly purchased and used illegal drugs with varying frequency between 2004 and July 2010. His two years of abstinence are insufficient to mitigate his six-year history of drug use. Clearance is denied.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons² (SOR)

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

² The SOR is undated.

explaining that it was unable to find that it is clearly consistent with the national interest to grant Applicant access to classified information. The SOR, which detailed the reasons for the action under the drug involvement guideline, recommended the case be submitted to an administrative judge for a determination to revoke or deny Applicant's access to classified information.

Applicant answered the SOR and requested a hearing. The case was assigned to me on February 7, 2012. The hearing took place as scheduled on April 2, 2012. At hearing, Government's Exhibits (GE) 1 and 2 were admitted without objection. Applicant testified and submitted Applicant's Exhibits (AE) A and B, which were also admitted without objection. After the hearing, I left the record open to allow Applicant to submit additional information. He submitted AE C and D, which were also admitted without objection. I received the transcript (Tr.) on April 10, 2012.

Findings of Fact

Applicant, an unmarried 25-year-old with no children, has worked as a federal contractor since May 2009. He has been with his current employer since January 2011 working as an electronics technician. This is his first security clearance application.³

In 2004, while in high school, Applicant began to use illegal drugs. Initially he used nitrous oxide. By 2007, his drug use expanded to include marijuana, cocaine, and Percocet. In 2008, he began to use LSD and ecstasy. Applicant admits that on occasion he purchased drugs for his personal use; other times he used drugs provided by his friends. Applicant and his friends used drugs in social settings such as camping trips and house parties. Applicant continued to use illegal drugs when he began his employment as a federal contractor on a military base in May 2009. Although he realized his drug use was illegal, he did not believe there was any company policy that prohibited off-duty drug use. He never reported to work under the influence of drugs, nor does he believe his drug use negatively impacted his job.⁴

Applicant last used illegal drugs in July 2010 primarily because it stopped being fun and he did not believe the behavior was compatible with his future success. He cited as a secondary factor the drug-related deaths of several of his high school classmates, including his childhood best friend in January 2012. Applicant classifies his prior drug use as youthful experimentation, never rising to a level that required intervention or treatment. He continues to spend time with some of the friends he used drugs with in the past, although he claims that he has not witnessed any drug use by them in the past couple of years. At hearing, Applicant expressed his intent not to use drugs in the future. He also stated in his Answer that he would be willing to sign a statement of intent with automatic revocation of his security clearance for any violation; however, he did not submit any such statement.⁵

³ Tr. 20-21; GE 1.

⁴ Tr. 21-30.

⁵ Tr. 17, 29-32, 35-39; Answer; GE 1.

In the time Applicant has worked for his current employer, he has performed well. His supervisor sees a well of potential in Applicant and believes that Applicant just needs more encouragement to fully develop that potential. He believes Applicant has shown good judgment in the performance of his duties and Applicant's performance review reflects his supervisor's statements. Applicant has also enrolled in college and completed his first semester with good grades.⁶

Policies

When evaluating an applicant's suitability for a security clearance, the 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, which are used in evaluating an Applicant's eligibility for access to classified information.

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." Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon 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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

⁶ Tr. 41; AE A, C, D.

Analysis

Guideline H, Drug Involvement

The security concern related to drug involvement is explained in AG ¶ 24.

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 willing to comply with laws, rules, and regulations.

Under AG ¶ 25, two disqualifying conditions are applicable to this case:

- (a) any drug abuse; and
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of any drug paraphernalia.

Applicant admits to purchasing and using illegal drugs as well as abusing prescription drugs with varying frequency, between 2004 and July 2010.

None of the mitigating conditions available under AG ¶ 26⁷ apply. Applicant's six-year history of drug use is too recent to be mitigated by two years of abstinence. Although, Applicant stated intent not to use drugs in the future, his statements are undercut by the casual attitude he displayed when discussing his prior drug use. His attitude reveals that he does not fully grasp the seriousness of the illegality of his conduct or its potential security ramifications. This became even more evident as he discussed his recreational drug use while working as federal contractor, albeit without a

⁷ (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;
- (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.

security clearance. Even as Applicant discussed his reasons behind his decision to stop using drugs, he focused more on the absence of fun formerly associated with the activity versus the serious and personal implications of losing friends and former classmates because of drug overdoses. Also, his social circle still includes some of the people with whom he used drugs in the past.

Given Applicant's recent history of drug use, I have reservations about his ability to protect classified information at this time. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2. During his two years of abstinence, Applicant has taken some positive steps towards building a responsible lifestyle. He has decided to attend college and is performing well academically and professionally. However, he has not maintained a sufficient period of abstinence to warrant a favorable decision. However, this should not be construed as a determination that Applicant cannot or will not, at some time in the future, be able to demonstrate a sufficient period of abstinence to justify the granting of a security clearance.

The award of a security clearance is not a once-in-a-lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. A clearance is not recommended with the Applicant's current circumstances, but should he be afforded an opportunity to reapply for a security clearance in the future, having demonstrated a longer period of abstinence and greater understanding of the negative security implications of any illegal drug use, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

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 – 1.g:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Clearance is denied.

Nichole L. Noel
Administrative Judge