



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 11-13948
)
Applicant for Security Clearance)

Appearances

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

December 13, 2013

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (E-QIP) on March 11, 2011. (Government Exhibit 1.) On July 23, 2013, 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 E and H 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 August 20, 2013, and he requested an administrative hearing before an Administrative Judge. This case was assigned to the undersigned on September 23, 2013. A notice of hearing was issued on September 24, 2013, and the hearing was scheduled for October 22, 2013. 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, and testified on his own behalf. The record remained open until close of business on November 1, 2013, to allow Applicant to submit additional

documentation. Applicant submitted two Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A and B, which were admitted without objection. The official transcript (Tr.) was received on October 30, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 53 years old and married with two teenaged children. He has a Bachelor's of Science Degree and a Masters Degree. He is employed with a defense contractor as an Senior Principal Engineer and is seeking to retain 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 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.

Paragraph 2 (Guideline H - Drug Involvement). The Government alleges that Applicant is ineligible for clearance because he abuses illegal drugs.

Applicant has been working for the defense industry for almost thirty years. (Tr. p. 25.) He completed his first security clearance application in 1986. Following that, he was granted a DoD security clearance in February 1999, in October 2002, and in September 2006. He was granted access to Sensitive Compartmented Information in December 2007. Over a twenty-four year period, from 1986 to 2010, he has consistently denied any illegal drug use on his security clearance applications. He states that at sometime in the 1986-87 time frame he told an investigator about his drug use, but nevertheless he kept denying it on his security clearance applications. (Tr. pp. 32-34.)

For example, Applicant completed a security clearance dated March 29, 2006. Question 24(a) asked the Applicant since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc), amphetamines, depressants (barbiturates, methaqualone, tranquilizers etc.) hallucinogenics (LSD, PCP, etc), or prescription drugs? The Applicant answered, 'NO.' This was a false answer. Applicant failed to disclose his use of marijuana in about 2004 and 2005.

Question 24(b) for the same application asked the Applicant if he had ever illegally used a controlled substance while employed as a law enforcement officer,

prosecutor, or courtroom official; while in possession of a security clearance; or while in a position directly and immediately affecting the public safety. The Applicant answered, 'NO.'" This was a false answer. Applicant failed to disclose his use of marijuana after he had been granted a DoD secret clearance in February 2009, September 2006, and October 2002.

Applicant admitted each of the allegations set forth in the SOR under this guideline. Applicant started using marijuana at the young age of 11 or 12 years old. During high school he used marijuana a couple of times a week. He also used LSD in 1983 while in high school. After graduating from high school he attended college where he continued to use marijuana, but he used it less frequently, possibly a couple times a month. It was in college that he also used cocaine in 1989 and 1990.

Applicant was first granted a security clearance in February 1999. At that time he was using marijuana. His security clearance was renewed in October 2002, and again in September 2006. He was also granted access to Sensitive Compartmented information in December 2007. Thus, over the past twenty-four years, while working in the defense industry, and while holding a security clearance, Applicant estimates that he has sporadically used marijuana about 250 times. Applicant knew that his use of marijuana was illegal and against DoD policy. He also knew that it was a violation of his companies policies. Applicant testified that he has used marijuana with friends at social events and that most of his marijuana use was a carry over from his childhood. He and his brother would use marijuana together on holiday celebrations. He states that he last used it in June 2010. On this occasion he was on vacation with his brother and family. He explained that they were sitting around the campfire at night and his brother offered him some marijuana. At first, Applicant said no, but he later succumbed. (Tr. p. 40.)

Applicant states that his wife is aware of the fact that he used marijuana in the past, but his children do not know. Applicant is ashamed and embarrassed for them to find out. He stated that he feels like a hypocrite having frank discussions with his teenagers about not using illegal drugs when all along he has been using using illegal drugs. He feels that he has taken his situation for granted.

Applicant testified that what led him to come clean about his marijuana use was the fact that he underwent another security investigation. During that investigation, he disclosed his use of illegal drugs. Applicant stated that it was about that time that he had an epiphany, realizing that he was no longer a young kid but a 50 year old man who was still using marijuana. He thought to himself that it was pretty ridiculous. (Tr.p. 51.) Applicant submitted a letter of intent not to abuse any illegal drugs in the future or be subject to automatic revocation of his security clearance. (Applicant's Post-Hearing Exhibit A.)

As discussed above, Applicant used marijuana while holding a DoD security clearance calls into question his maturity, his character, his judgment and his ability to follow rules and regulations associated with having a security clearance.

A letter from the Applicant's department manager indicates that following the hearing, Applicant disclosed to him the issues under evaluation by the DoD. His manager was surprised and disappointed by Applicant's mistakes as Applicant's behavior is not consistent with his perception of the Applicant. Applicant is a well-respected, highly ranked engineer, and one who the company has trusted to consistently take responsibility to get the job done. Applicant has performed exceptionally on the job and is a valued member of the organization. (Applicant's Post-Hearing Exhibit B.)

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.(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) 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.

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 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 personal conduct and drug involvement 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 dishonesty (Guideline E) and illegal drug use (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 has been using marijuana over the past twenty-four years while holding a DoD security clearance. This illegal conduct is inexcusable and shows a defect in character and poor judgment. This is not a one time error in judgment, but has been a habit that has occurred continually and consistently over the years. As Applicant stated, he took his situation for granted. He is 53 years old but shows the maturity level of a young person. He states that he has not used marijuana since June 2010. Although he has not used marijuana for almost three years, given his past history, this conduct is likely to recur. This past conduct casts doubt on his current reliability, trustworthiness and judgment. Under Guideline H, Drug Involvement, Disqualifying Conditions 25.(a) *any drug abuse*; and 25.(g) *any illegal drug use after being granted a security clearance* apply. This conduct is so egregious, more time in abstinence is required to demonstrate that he can and will permanently adopt a drug free lifestyle.

At this time, there is insufficient evidence of drug rehabilitation. Considering all of the evidence, Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case. Accordingly, I find against Applicant under Guideline H, Drug Involvement.

Furthermore, Applicant deliberately falsified a number of security clearance applications over the years in order to conceal his illegal drug use from the Government and obtain a DoD security clearance. This conduct is also inexcusable. Under Guideline E, Personal Conduct, Disqualifying Conditions 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. Accordingly, Guideline E (Personal Conduct) is found against 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 poor judgement, untrustworthiness, unreliability, a lack of candor, and an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

I have considered all of the evidence presented, including Applicant’s favorable performance evaluations, excellent work history and letter of recommendation. Given his long and hidden history of drug use, they fail to mitigate the negative effects his personal conduct and drug involvement can have on his ability to safeguard classified information. On balance, it is concluded that Applicant has failed to overcome the Government’s case opposing his request for a security clearance. Accordingly, the evidence supports a finding against 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:	Against Applicant.
Subpara. 1.a.:	Against Applicant.
Subpara. 1.b.:	Against Applicant.
Subpara. 1.c.:	Against Applicant.
Subpara. 1.d.:	Against Applicant.

Paragraph 2: Against Applicant.
Subpara. 2.a.: Against Applicant.
Subpara. 2.b.: Against Applicant.
Subpara. 2.c.: Against Applicant.
Subpara. 2.d.: Against Applicant.
Subpara. 2.e.: Against Applicant.
Subpara. 2.f.: Against Applicant.
Subpara. 2.g.: Against Applicant.
Subpara. 2.h.: Against 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 Applicant. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge