



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



In the matter of:)	
)	
)	ISCR Case No. 11-14403
)	
Applicant for Security Clearance)	

Appearances

For Government: Allison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

12/06/2012

Decision

LYNCH, Noreen, A., Administrative Judge:

The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging security concerns arising under Guideline H (Drug Involvement) and Guideline E (Personal Conduct). The SOR was dated August 22, 2012. 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) implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on October 15, 2012. DOHA issued a notice of hearing on November 2, 2012, scheduling the hearing for November 27, 2012. Government Exhibits (GX) 1 and 2 were admitted into evidence without objection. Applicant testified. DOHA received the transcript (Tr.) on December 4, 2012. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations under Guideline H (Drug Involvement) and Guideline E (Personal Conduct) with explanations.

Applicant is a 24-year-old engineer who works for a defense contractor. He obtained his undergraduate degree in May 2011. At the same time, he also received a master's degree. (Tr. 13) He is single and has no children. (Tr. 12) Applicant completed several internships with government contractors. He has worked for his current employer since July 2011, and he was hired as a co-op student in 2009. He has held a security clearance since June 2009.¹ (GX 1) He has completed two security clearance applications. (Tr. GX 1-2)

Applicant admitted using marijuana in his senior year in high school and in college from June 2006 until June 2011. (Tr. 21) He smoked marijuana with friends socially in high school and college. From 2008 until 2009, he used marijuana on multiple occasions, sometimes daily, and he also purchased marijuana. (Tr. 16) His use dwindled to perhaps once a month after that time.

Applicant also acknowledged that he used and purchased cocaine on multiple occasions from July 2008 until at least August 2008. He experimented with Ecstasy on one occasion in 2008. (Tr. 20) He used Adderall without a prescription four or five times. Applicant purchased Adderall from another student in 2007 or 2008. He admitted to use of LSD once in 2007. (Tr. 21) His last use of any illegal drug was in June 2011.

Applicant explained that he was in college and made mistakes. He has changed his location to another state. He no longer associates with anyone who uses illicit drugs. He has no intention of using illegal drugs and would be willing to sign an agreement to that effect.

Applicant states that he stopped using illegal drugs because he had a job and his girlfriend did not like it. He understands that it is a significant risk to his career and to his livelihood. (Tr. 22)

When Applicant was an intern in 2008, he took two pre-employment tests for drug use. He passed the tests. At that time, he knew the use of illegal drugs was against policy. However, he continued to use drugs. (Tr. 23) He took approximately three other drug tests, which he passed.

Applicant completed an SF-86 security clearance application in March 2009. This was his first application. In response to Question 23, he disclosed his June 2006 to November 2007 illegal drug use but did not list the 2007 until 2009 use of illegal drugs and he omitted any use of LSD. He even noted in the comment section that he disclosed all of his controlled substance use and hoped it did not weigh against his

¹At the hearing, the Government amended SOR 1.j from March to June 2009. Also, Counsel cross-alleged that allegation under Personal Conduct, adding SOR 2.c.

security clearance eligibility too much. (Tr. 30; GX 1) He admitted that he falsified the security clearance application. (Tr. 28) His reasoning was that he was nervous about his prior drug use and intimidated. He was not sure what would happen if he told the truth.

During an April 2009 security interview with an OPM investigator, Applicant stated that he had not used any illegal drugs since November 2007. He explained that he gave the interviewer information that was consistent with his 2009 security clearance application. He did not inform his employer about the falsification. (Tr. 31)

Applicant completed another SF-86 in 2011. At that time, he was applying for a top secret clearance. (Tr. 31) He believed that he would undergo a polygraph examination. He stated that he then disclosed the true and correct information concerning his illegal drug use because he wanted to set the record straight but he also believed it would be better for him if he presented the negative information instead of it being uncovered during the polygraph interview. (Tr. 32)

When questioned at the hearing, Applicant admitted that he lied in 2009 about his drug use because he might not get a security clearance if he told the truth. (Tr. 33) He also stated that he knew it was wrong and could potentially affect his ability to hold a clearance in the future. He stated that he is motivated to tell the truth now because he might lose his job and it might be difficult to find another one. (Tr. 34)

He believes the assurance that he can give now is based on his large student debt that is trying to pay. He does not want to lose his job. He also does not associate with the same people. He wants to start a family and build a future. (Tr. 34)

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The Government must present evidence to establish controverted facts alleged in the SOR. An 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 burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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.” “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.” Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information. The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline H, Drug Involvement

AG ¶ 24 expresses the security concern pertaining to drug involvement: 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.

(a) Drugs are defined as mood and behavior altering substances, and include:

- (1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and
- (2) inhalants and other similar substances;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying:

- (a) any drug abuse (see above definition);
- (b) testing positive for illegal drug use;
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;
- (e) evaluation of drug abuse or drug dependence by a licensed clinical social worker who, is a staff member of a recognized drug treatment program;
- (f) failure to successfully complete a drug treatment program prescribed by a duly qualified medical professional;
- (g) any illegal drug use after being granted a security clearance; and,
- (h) expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.

Applicant admitted his use of illegal drugs, primarily marijuana, from at least June 2006 until June 2011. He also purchased marijuana and other drugs. Applicant also admitted that he used and purchased cocaine on multiple occasions from July 2008 until at least August 2008. Applicant used Ecstasy, LSD, and Adderall, a prescription drug, without a prescription in 2007 and 2008. He used these illegal drugs after obtaining a security clearance in 2009. AG ¶ 25(a), 25(c), and 25(g) apply.

AG ¶ 26 provides conditions that could mitigate security concerns:

- (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; and,

(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.

Applicant's last use of any illegal substance was in June 2011. He states that he has not used any illegal drugs since that time. He states that has no intention of using any illegal drugs. Granted, a large part of his use was while in college. However, he continued the use after applying for and obtaining a security clearance. He continued to use illegal drugs after taking drug test. His recent drug use does not reflect good judgment, reliability, and trustworthiness. Despite a change in environment, he has not mitigated the security concerns under this guideline. None of the mitigating factors apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

(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;

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

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single

guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources.

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group;

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment; and

(g) association with persons involved in criminal activity.

As discussed above, Applicant intentionally falsified his 2009 security clearance application. He also admitted that he reiterated these false statements when speaking to the investigator in 2010. In 2011, he was motivated to tell the truth for fear of his falsifications being discovered during a polygraph. He has shown a pattern of

dishonesty. AG ¶¶ 16(a), 16(b), and 16(d)(3) apply. His conduct shows a pattern of untrustworthiness.

AG ¶ 17 provides conditions that could mitigate security concerns:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant admitted that he intentionally falsified his first security clearance application in 2009 and again lied to the investigator in 2010. The reason he gave for disclosing the truth in 2011 was fear of being discovered in a polygraph. He did not make good-faith efforts to correct his omission. His falsifications did not result from inappropriate advice. The offense is not minor but goes to his integrity. He was holding a security clearance and had the Government's trust. He has not presented any other information to persuade me that he has mitigated personal conduct concerns regarding the falsification. I have doubts about his judgment, trustworthiness, and reliability. After considering the mitigating conditions outlined in AG ¶ 17, I conclude Applicant has not mitigated the security concern under personal conduct or drug use.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is a 24-year-old professional who is educated and holds a position that requires a security clearance. He had several internships from 2009 until obtaining his current employment in 2011. He admitted that he used marijuana and experimented with other illegal drugs even after his grant of a security clearance. He admitted that he intentionally falsified responses in both his 2009 security clearance application and his OPM interview in 2010. He waited until the possibility of disclosure during a 2011 polygraph to tell the entire truth about his illegal drug use. His regret is that he may lose his job and his career. He has not acknowledged his poor judgment.

His recent falsification when considered with his illegal drug use outweighs any other behavior and is not mitigated. I have doubts about his judgment. Any doubts must be resolved in favor of the Government. Applicant has not met his burden in this case. He has not mitigated the security concerns under drug use and personal conduct. Clearance is denied.

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.j:	Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraphs 2a-2c: Against Applicant

Conclusion

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

NOREEN A. LYNCH.
Administrative Judge