



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



In the matter of:)	
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)	ISCR Case No. 11-14595
Applicant for Security Clearance)	

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: *Pro se*

12/18/2012

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for a security clearance to work in the defense industry. The evidence shows Applicant has a history of drug abuse during the period 2004–2011. He did not present sufficient evidence of reform and rehabilitation to mitigate the concerns about his fitness and suitability to hold a security clearance. For the reasons discussed below, this case is decided against Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on or about August 13, 2012, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him access to classified information. The SOR is similar to a complaint, and it detailed the reasons for the action under the security guideline known as Guideline H for drug involvement.

Applicant timely answered the SOR. Neither Applicant nor Department Counsel requested a hearing, and so, the case will be decided on the written record.²

On or about October 9, 2012, Department Counsel submitted all relevant and material information that could be adduced at a hearing.³ This so-called file of relevant material (FORM) was mailed to Applicant, who received it October 15, 2012. His reply to the FORM consists of a two-page written brief, a one-page drug-abuse screen, and a one-page signed statement of intent to not engage in further drug abuse. Those matters are admitted as Exhibit A without objections. The case was assigned to me December 4, 2012.

Ruling on Procedure

The SOR is amended sua sponte to address a drafting error that alleged two subparagraphs 1.d. It is corrected by designating the second as subparagraph 1.e.

Findings of Fact

The SOR, in general, alleged illegal drug involvement spanning the period 1999–2011. He admitted the allegations in his answer to the SOR. His admissions are accepted and adopted and incorporated as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 30-year-old employee of a federal contractor. His educational background includes a bachelor's degree in economics awarded in 2005 and an associate's degree in computer electronics awarded in June 2011. He has been married

¹ This case is adjudicated under Executive Order 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 here. 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 Directive, Enclosure 3, ¶ E3.1.7.

³ The file of relevant material consists of Department Counsel's written brief and supporting documents, some of which may be identified as exhibits in this decision.

since September 2009. He has worked as a network controller for his current employer since August 2011. He is seeking a security clearance for the first time, submitting an application in August 2011.⁴

In completing his security clearance application, Applicant was required to answer multiple questions about his background and personal history, including questions about use of illegal drugs and his police record. He disclosed the following matters concerning illegal drugs:

1. He used marijuana on a regular basis during 2004–2011. He was unable to estimate the number of times he has used marijuana.
2. He used LSD in July 2009 while attending a bachelor's party in Las Vegas.
3. He purchased marijuana during 2004–2008.
4. He used LSD in July 2008 when attending a concert.
5. He used cocaine in March 2008 while out with friends.
6. He used cocaine in January 2008 while staying at a hotel in the mountains.
7. He used cocaine in October 2008 (and drank some blackberry moonshine) after attending a college sports event with a friend.
8. He used cocaine during 2004–2005 on a random basis and did not recall more specific dates.

In addition to illegal drug use, he disclosed a July 1999 arrest for the offense of possession of drug paraphernalia, for which he received six months of probation. He further explained that the offense was resolved in juvenile court, as he was a 17-year-old minor in July 1999.

In his reply to the FORM, Applicant asserted that he (1) no longer associates with drug-using friends and contacts, (2) is avoiding a drug-using environment, (3) has demonstrated a period of abstinence, and (4) signed a statement of intent with automatic revocation of a security clearance should he engage in any violation. To that end, he submitted the signed statement of intent as well as a drug-abuse screen, which tested his hair, that was negative for amphetamines, cocaine, marijuana, opiates, and phencyclidine.⁵

⁴ Exhibit 4.

⁵ Exhibit A.

Law and Policies

It is well-established law that no one has a right to a security clearance.⁶ As noted by the Supreme Court in *Department of Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁷ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.⁸ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.⁹

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁰ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹¹ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹² In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹³ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁴ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.¹⁵

The AG set forth the relevant standards to consider when evaluating a person’s security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense

⁶ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

⁷ 484 U.S. at 531.

⁸ Directive, ¶ 3.2.

⁹ Directive, ¶ 3.2.

¹⁰ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹¹ Directive, Enclosure 3, ¶ E3.1.14.

¹² Directive, Enclosure 3, ¶ E3.1.15.

¹³ Directive, Enclosure 3, ¶ E3.1.15.

¹⁴ *Egan*, 484 U.S. at 531.

¹⁵ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.¹⁶ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Discussion

Under Guideline H,¹⁷ the security concern is that the use of an illegal drug, or misuse of a prescription drug, raises questions about a person's judgment, reliability, and trustworthiness. In this context, the term drug abuse means "the illegal use of a drug or use of a legal drug in a manner that deviates from the approved medical direction."¹⁸ The guideline also expresses a concern that drug involvement may call into question a person's ability or willingness to follow laws, rules, and regulations.

Here, the evidence is more than sufficient to establish security concerns based on Applicant's history of drug abuse.¹⁹ The evidence shows he engaged in a pattern of drug abuse for many years. He used marijuana during 2004–2011, and he bought marijuana to facilitate his use. He also used LSD in 2008 and 2009, and he used cocaine several times during 2004–2008. The last incident of drug abuse took place just months before he completed his August 2011 security clearance application. And his drug abuse amounts to illegal conduct,²⁰ which reflects poorly on his judgment, reliability, trustworthiness, and willingness to follow laws, rules, and regulations.

There are four mitigating conditions to consider under Guideline H.²¹ Based on the evidence before me, none of the mitigating conditions are sufficient to mitigate the security concerns raised by his history of drug abuse. He did not present sufficient evidence of reform and rehabilitation to persuade me that his drug abuse is safely in the past. In particular, his more recent drug abuse is most troubling and raises questions about his judgment, because it took place after his 2009 marriage and just months before he began employment for a federal contractor.

¹⁶ Executive Order 10865, § 7.

¹⁷ AG ¶¶ 24–26 (setting forth the security concern and the disqualifying and mitigating conditions).

¹⁸ AG ¶ 24(b).

¹⁹ AG ¶ 25(a).

²⁰ AG ¶ 25(c).

²¹ AG ¶ 26(a)–(d).

Applicant's pattern of drug abuse over many years justifies doubts about his judgment, reliability, and trustworthiness. Following *Egan* and the clearly-consistent standard, I resolve these doubts in favor of protecting national security. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept.²² Having done so, I conclude that Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline H:	Against Applicant
Subparagraphs 1.a–1.d:	Against Applicant
Subparagraph 1.e:	For Applicant ²³

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Michael H. Leonard
Administrative Judge

²² AG ¶ 2(a)(1)–(9).

²³ This allegation is resolved for Applicant because it is based on a juvenile court matter that occurred more than ten years ago when he was a minor.