



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 12-00046
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

04/08/2013

Decision

MALONE, Matthew E., Administrative Judge:

Applicant used illegal drugs from about 1995 until at least December 2009. Some of his drug use occurred while he held a security clearance. Also, in his answers to a 2010 security clearance application, and in a subsequent subject interview, he intentionally provided false information about his illegal drug use. He failed to mitigate the security concerns raised about his drug use and personal conduct. Clearance denied.

Statement of the Case

On March 3, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (eQIP) to renew a security clearance required for his employment with a defense contractor. After reviewing the results of Applicant's background investigation, the Department of Defense (DOD) was unable to find that it is clearly consistent with the national interest to continue Applicant's access to classified

information.¹ On August 31, 2012, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guidelines (AG)² for drug involvement (Guideline H) and personal conduct (Guideline E).

Applicant timely answered the SOR (Answer) and requested a hearing, and the case was assigned to me on December 19, 2012. I convened a hearing in this matter on January 17, 2013, and the parties appeared as scheduled. Department Counsel presented Government's Exhibits (Gx.) 1 - 5, which were admitted without objection. Applicant testified and presented Applicant's Exhibit (Ax.) A, which was admitted without objection. DOHA received a transcript (Tr.) of the hearing on February 1, 2013.

Findings of Fact

The Government alleged under Guideline H that Applicant used marijuana from about 1995 until December 2009 (SOR 1.a); that he used cocaine between 2008 and December 2009 (SOR 1.b); and that he used marijuana after being granted a security clearance (SOR 1.c). Applicant admitted these allegations; however, as to SOR 1.b, based on available information at hearing, I amended the SOR 1.b allegation to reflect that Applicant actually used cocaine between 2008 and 2009. (Tr. 84 - 86)

The Government alleged under Guideline E, that Applicant intentionally made a false official statement when he omitted his use of drugs from a security clearance application (SF 86) he submitted on August 10, 2000 (SOR 2.a); that in October 2006, he was administratively separated from the United States Air Force for misconduct, including drug use (SOR 2.b); that in 2007, Applicant was charged and convicted of driving under the influence of alcohol (DUI) (SOR 2.c); that in November 2008, he was charged and pleaded guilty to driving on a suspended driver's license (SOR 2.d); that he intentionally made a false official statement when he omitted his use of drugs from his March 2010 Electronic Questionnaire for Investigations Processing (eQIP) when he stated he had used marijuana only between October 2006 and July 2007, and by omitting his use of cocaine through December 2009 (SOR 2.e); and that in April 2010, Applicant intentionally made a false official statement when he told an investigator during a subject interview that his last use of marijuana was in July 2009, and that he had not used any other illegal drugs (SOR 2.f). Applicant admitted SOR 2.b - 2.d.

Applicant's admissions are incorporated in my findings of fact. Having reviewed the response to the SOR, the transcript, and exhibits, I make the following additional findings of fact.

Applicant is 30 years old and employed by a defense contractor as a systems integration technician, a job he has held since December 2007. He was married from 2002 until he and his wife, with whom he has a four-year-old child, separated in 2008. They are now divorced, and Applicant remarried in mid-2011. (Gx. 1; Tr. 15)

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

² The adjudicative guidelines were implemented on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

Applicant served in the Air Force as a jet engine mechanic from December 2000 until he received a general discharge under honorable conditions in October 2006. Applicant held a security clearance while in the Air Force. His clearance was still active when he was hired for his current job, in which he has been working with classified information on a regular basis. (Gx. 1; Tr. 77 - 78)

In 2007, Applicant was arrested, charged and convicted of DUI. His sentence included a suspension of his driver's license and successful completion of an alcohol and drug safety awareness program (ADSAP). In 2008, Applicant was charged and pleaded guilty to driving while his driver's license was still suspended for his 2007 DUI.

Applicant twice failed to complete ADSAP because he tested positive for cocaine and marijuana. Treatment records from his third enrollment in ADSAP between January and June 2010 show that he began using marijuana at about age 12. His use gradually increased through high school until he enlisted in the Air Force in 2000. He resumed using marijuana while on active duty and after he had received a security clearance. In October 2006, Applicant was administratively separated from the Air Force. Military records reflect several violations of the Uniform Code of Military Justice, including use of illegal drugs. (Answer; Gx. 1; Gx. 2; Gx. 4; Gx. 5)

Applicant continued using marijuana after leaving the Air Force. Between 2008 and 2009, he also used cocaine with varying frequency. His last known use of illegal drugs was on December 31, 2009. He started his third ADSAP in January 2010 and successfully completed the program in June 2010. During admission to and discharge from ADSAP, Applicant was diagnosed as being dependent of alcohol, cocaine and marijuana. (Gx. 5)

Applicant's March 2010 eQIP was submitted to begin a periodic reinvestigation of his suitability for a security clearance. Despite having used marijuana and cocaine three months earlier, he stated he had only used marijuana, and that his drug use was only between 2006 and 2007. When Applicant was interviewed by a government investigator in April 2010, he claimed he had used only marijuana, and that his last use of that drug had been in July 2009. ADSAP records and his admissions to the SOR 1 allegations directly contradict his eQIP disclosures and his statements during his interviews. (Gx. 2 - 5; Tr. 77 - 78)

Applicant testified that he used marijuana as a coping mechanism for anxiety attacks. The Government's information corroborated his treatment for anxiety while on active duty, and Applicant is receiving related disability benefits. Applicant also testified that he was diagnosed with lupus after he was discharged, and that he was out of work between May 2010 and July 2011. He averred that he is now healthy and conscientious about living a clean and sober lifestyle. The pastor at his church commented favorably on Applicant's character, and stated that he knows Applicant has been sober and drug free since at least May 2011. (Gx. 2; Ax. A; Tr. 50 - 54, 79)

Policies

A security clearance decision is intended to resolve whether it is clearly consistent³ with the national interest for an applicant to either receive or continue to have access to classified information. Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁴ and consideration of the pertinent criteria and adjudication policies in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

(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.

The presence or absence of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁵

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁶

³ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴ Directive. 6.3.

⁵ See *Egan*, 484 U.S. at 528, 531.

⁶ See *Egan*; AG ¶ 2(b).

Analysis

Drug Involvement

Applicant used marijuana between about 1995 and 2009. He also used cocaine in 2008 and 2009. His drug use after 2000 occurred while he held a security clearance, first in the Air Force and, since 2007, as a defense contractor. This information raises a security concern articulated at AG ¶ 24 as follows:

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.

More specifically, information about Applicant's drug use requires application of the following AG ¶ 25 disqualifying conditions:

(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; and

(g) any illegal drug use after being granted a security clearance.

I have considered all of the mitigating conditions listed at AG ¶ 26. I conclude that none of them apply here. Although Applicant's last use of illegal drugs occurred more than three years ago, it must be considered as recent given his use of marijuana for more than 17 years. He claimed that he is now mature, healthy and sober, and that he will not use drugs in the future. However, his claims in this regard are undermined by his willingness to use drugs despite working in military and defense industry jobs where he knew such conduct was not acceptable. His claims of future abstinence also fail

because of his intentional false official statements about his drug use. Finally, Applicant was diagnosed as drug dependent in 2010, but he has not engaged in any rehabilitative treatment for that condition. His completion of ADSAP is a step in the right direction, but only after twice failing the course due to continued drug use. On balance, Applicant has not mitigated the security concerns under this guideline.

Personal Conduct

Applicant deliberately provided false information about his drug use in a March 2010 eQIP, and in an April 2010 subject interview with a Government investigator. Further, Applicant's other misconduct between 2000 and 2010 casts doubt on his judgment, reliability and trustworthiness. His drug use and other misconduct caused him to be administratively separated from the Air Force in 2006. In 2007, he was convicted of DUI. He failed to comply with the terms of his sentence by driving on a suspended driver's license in 2008. His continued drug use also caused him to twice fail the ADSAP requirement of his sentence.

As to the SOR 2.a allegation that Applicant intentionally omitted relevant adverse information from a 2000 SF 86, Applicant denied that allegation and the Government did not present that document or otherwise support SOR 2.a, which is resolved in favor of Applicant. Nonetheless, available information sufficiently supports all of the remaining SOR 2 allegations and establishes that Applicant intentionally tried to conceal the true scope of his drug use. All of the foregoing raises a security concern about his personal conduct, which is addressed at AG ¶ 15, as follows:

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.

Specifically, the record requires application of the following AG ¶ 16 disqualifying conditions:

(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; and

(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.

In response to the allegations of falsification, Applicant did not plausibly explain his multiple misrepresentations. He did not establish that he was improperly advised about the required information or that he made a good-faith effort to accurately disclose his drug use and other adverse information in his background. His falsifications were not minor events, in that they violated federal law governing such conduct. Nor did Applicant provide sufficient other information to show that the misconduct documented since 1995 will not recur. Accordingly, I conclude that none of the AG ¶ 17 mitigating conditions apply, and that Applicant has failed to mitigate the security concerns about his personal conduct.

Whole-Person Concept.

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines H and E. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). I further note that Applicant is 30 years old and presumed to be a mature, responsible adult. He has remarried and has overcome his recent medical issues. He is a valued member of his church. However, this positive information is not enough to outweigh the concerns about more than 17 years of drug use and dependence, and about his attempts to mislead the Government about his misconduct. A fair and commonsense assessment of all information bearing on Applicant's suitability for access to classified information shows continued reasonable doubts about his judgment, trustworthiness, and reliability. Because protection of the national interest is the primary concern here, those doubts are resolved in against continuing Applicant's security clearance.

Formal Findings

Formal findings 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.c:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraphs 2.b - 2.f:	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to continue Applicant's access to classified information. Request for security clearance is denied.

MATTHEW E. MALONE
Administrative Judge