



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



In the matter of:)	
)	
)	ISCR Case No. 12-03988
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

02/11/2013

Decision

CURRY, Marc E., Administrative Judge:

Although Applicant appeared contrite about his history of cocaine use, it is too soon to conclude that he has mitigated the security risk given the recency of his last use, which occurred while holding a security clearance, and the extensive span of time that he abused cocaine in the past. Clearance is denied.

Statement of the Case

On September 12, 2012, the Defense of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, drug involvement. 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) effective as of December 1, 2006.

DOD received Applicant's answer on October 3, 2012, admitting all of the allegations except subparagraph 1.d, and requesting a hearing. On November 29, 2012, the case was assigned to me. On December 10, 2012, a notice of hearing was issued scheduling the case for January 14, 2013. At the hearing, I received into evidence two Government exhibits marked as Government Exhibits (GE) 1 and 2, and nine Applicant Exhibits, marked as Applicant Exhibits (AE) A through I. Also, I considered Applicant's testimony. The transcript was received on January 23, 2013.

Findings of Fact

Applicant is a 42-year-old married man with two children, ages seven and five. He has been married for 12 years. He earned a bachelor's degree in fire protection engineering in 1992, graduating with honors, and a master's degree in engineering in 1994. (GE 1 at 10; Tr. 44) Since 1994, he has worked for the same company as a fire protection engineer. His duties include designing safer buildings and more efficient fire escapes. Currently, he is a senior project manager. (Tr. 21)

Applicant is highly respected on the job. According to his supervisor, he is one of the company's most valuable senior engineers, "and has consistently demonstrated a high level of proficiency on the job and has always conducted himself in a professional manner." (AE A)

Applicant has abused cocaine approximately ten times over the years. The majority of his cocaine use occurred before 2003. Most recently, he has used cocaine once in 2006 and once in 2010. (Tr. 25) The 2006 episode occurred on a weekend golf trip with friends. (Tr. 29) The 2010 episode occurred during a bachelor party. (Tr. 31) One of the people at the bachelor party was a coworker. When Applicant abused cocaine in 2010, he had a security clearance. (Tr. 37)

Applicant did not purchase the cocaine that he used in 2006 or 2010. He has not purchased cocaine in more than 15 years. (Tr. 31)

Applicant applied for a security clearance through another agency in the late 1990s. His application was denied. Applicant never received a rationale for the basis of the denial, but "assumed it was because of [his] admitted drug use." (Tr. 41)

Applicant recognizes the foolishness of his cocaine use, and is "very ashamed and disappointed with [himself]." (Tr. 48) After a long talk with his wife after coming home from the bachelor party, he decided never to abuse cocaine again. (Tr. 49) He has stopped associating with his drug-abusing acquaintances, and "no longer places [himself] in situations where drugs are being used or might be used." (AE I; Tr. 50) On December 7, 2012, he memorialized his intent never to abuse drugs again in a signed, sworn affidavit. (AE D)

On January 3, 2013, Applicant underwent a random drug test. The results were negative. (AE B, E)

Policies

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The 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.”

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 security clearance.

Analysis

Guideline H, Drug Involvement

Under this guideline, “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.” (AG ¶ 24) Applicant did not purchase cocaine between 2005 and 2010, as alleged in the SOR. I resolve SOR subparagraph 1.d in his favor. Conversely, between approximately 1995 and 2010, Applicant abused cocaine approximately ten times. During his most recent use, he possessed a security clearance. AG ¶ 25(a), “any drug abuse,” and AG ¶ 25(g), “any illegal drug use after being granted a security clearance,” applies.

The following mitigating conditions under AG ¶ 26 are potentially applicable:

(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;
and

(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 are used;

(3) an appropriate period of abstinence; and

(4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant only used illegal drugs twice during the past ten years. He has disassociated himself from his drug-using associates and contacts, changed his environment, and he executed a signed, sworn statement of intent to not abuse illegal drugs in the future.

Although Applicant's cocaine use was infrequent, the last use occurred while he held a security clearance, less than three years ago. Also, Applicant continued to use cocaine through the 2000s despite having been rejected for a security clearance in the late 1990s, for what he suspected was his admission of drug use. Under these circumstances, the infrequency of his use is outweighed by its nature, its seriousness, and its recency. Consequently, AG ¶ 26(b) applies, but not AG ¶ 26(a).

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 the 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.

Applicant is a stellar employee and is dedicated to volunteerism. Although these are impressive attributes, their probative value is limited because he was participating in these activities in part during the same period that he was periodically abusing cocaine. Upon considering this case in the context of the whole-person concept, I conclude that Applicant failed to mitigate the security concern.

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.c:

Against Applicant

Subparagraph 1.d:

For 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY
Administrative Judge