



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-01616

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel

For Applicant: *Pro se*

02/17/2017

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to revoke his eligibility for a security clearance to work in the defense industry. He has presented sufficient evidence to mitigate concerns raised by his history of illegal drug use, his 2009 arrest and subsequent conviction on drug charges, and his falsification of a 1989 security clearance application. Clearance is granted.

Statement of the Case

On November 24, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the drug involvement, criminal involvement, and personal conduct guidelines.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

¹ This case is adjudicated under Executive Order (EO) 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 to this case. 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.

Applicant timely answered the SOR and requested a hearing. On June 23, 2016, I issued a prehearing order to the parties regarding the exchange and submission of discovery, the filing of motions, and the disclosure of any witnesses.² The parties submitted documents by the July 6, 2016 deadline. At the hearing, which proceeded as scheduled on July 11, 2016, I admitted Government's Exhibits (GE) 1 through 7, Applicant's Exhibits (AE) A through M, and Hearing Exhibits I – III, without objection. The record remained open until August 31, 2016, to allow Applicant to submit additional information. The Defense Office of Hearing and Appeals (DOHA) received the transcript (Tr.) on July 25, 2016. Applicant timely submitted AE N through Q, which are also admitted, without objection.³

Findings of Fact

Applicant has worked for a federal contractor since September 2012. He completed his most recent security clearance application in October 2012, disclosing use of methamphetamines between 2008 and 2010; illegal drug use after being granted a security clearance in 2000; a 2009 arrest and conviction on drug charges; and his subsequent treatment for substance abuse. During the investigation, Applicant revealed earlier drug use in high school and college that he intentionally failed to disclose on his 1989 security clearance application.⁴

Applicant graduated from high school in 1983 and earned an associate's degree in electronics technology in 1989. In high school and college, Applicant used drugs recreationally. He experimented with cocaine twice in the early 1980s. He smoked marijuana frequently between 1980 and 1989. Between 1987 and 1989, he used methamphetamines. Applicant stopped all drug use when he became a DOD civilian employee in 1989. Applicant used his transition to full-time employment to change his social environment and distance himself from people who used drugs. He focused on his career and his marriage. When his marriage ended in divorce in 1996, Applicant continued to abstain from drugs, citing the network of friends he had developed during his tenure as a federal employee. He married again in July 2004.⁵

In 2005, a medical condition forced Applicant into early retirement when he was 40 years old. Without his work, he began to feel depressed. His second marriage ended in divorce in December 2008. Unemployed, depressed, and lonely, Applicant began to use methamphetamines. His use soon morphed into an addiction. In March 2009, Applicant was pulled over for a minor traffic violation. Based on Applicant's behavior, the officer suspected that Applicant was under the influence of methamphetamines. Applicant consented to a car search and the officer found the drug and drug

² This amended order changed the filing date of the pre-hearing submissions from July 16, 2016 to July 6, 2016.

³ HE IV.

⁴ Tr. 20; GE 1-2, 4.

⁵ Tr. 21, 24-26, 41, 43-48; GE 1-2.

paraphernalia. At the time of the arrest, Applicant was working for a federal contractor as a consultant on an as-needed basis. Applicant testified that he was not working regularly on the contract when he was arrested. The record is unclear about whether Applicant's security clearance, renewed in 2000, was active at the time of his arrest.⁶

Applicant views his arrest as the moment that changed and saved his life. For the next year, Applicant tried to stop using drugs on his own. When he realized that he needed help, he disclosed his drug problem to his primary care physician. Applicant's doctor encouraged him to disclose his problems to his family and referred him to a psychologist for drug treatment.⁷

Taking his doctor's advice, Applicant first approached his father. Taken aback by his son's confession of drug addiction, Applicant's father made it clear that he was there to provide unconditional support. In October 2010, Applicant pleaded guilty to reduced charges of possession of drug paraphernalia and driving under the influence of a dangerous drug. He was sentenced to one day in jail and three years' supervised probation. Applicant also lost his driving privileges and was ordered to complete a drug treatment program. Applicant's father, a retired Air Force senior master sergeant, drove Applicant to his doctor's appointments and counseling sessions. Applicant found similar support when he disclosed his drug use to his older siblings. He eventually shared his addiction story with extended family members at a recent family reunion.⁸

At the time of his sentencing, Applicant had been receiving counseling from a psychologist for several months. The court accepted this counseling as fulfilling the terms of his sentence. During counseling, Applicant discovered his triggers and developed positive coping strategies. Applicant also learned that he was using methamphetamines to medicate undiagnosed adult attention deficit hyperactivity disorder (ADHD), which is now managed by the appropriate medication. Applicant worked with his psychologist for a year and a half before she moved her practice to another state. She instructed Applicant that he could not maintain his sobriety through counseling alone and that he needed the support of a sobriety-management group. In 2011, Applicant began attending Narcotics Anonymous (NA). Based on his progress in counseling, Applicant was released from probation after 18 months.⁹

Within a month of attending his first meeting, Applicant secured a sponsor and began working through the 12-step program. With the encouragement of his sponsor, Applicant has taken on a leadership role in the chapter and routinely leads the meetings. Applicant is also a sponsor. Applicant's sponsor believes by sponsoring

⁶ Tr. 21, 26-28, 41-42, 48, 54-56, 59, 65-67; GE 5, AE L-M.

⁷ Tr. 28-30, 33, 48-49, 59-60.

⁸ Tr. 32-34, 60-61, 72-74, 77-80; GE 6.

⁹ Tr. 30-32, 49-50, 83; AE L, P.

another person, Applicant is given another opportunity to work through the 12-step program, thereby increasing his commitment to sobriety.¹⁰

In addition to regular NA participation, Applicant maintains regular contact with his primary care physician, who manages his ADHD medication. Although not a specialist in addiction treatment, Applicant's primary physician has had the opportunity to observe Applicant closely over the last eight years, and believes that Applicant has worked hard to return himself to good health. Applicant, who is confined to a wheelchair, also sees a pain specialist to manage chronic pain. Applicant disclosed his addiction history to his pain doctor, who monitors his opiate pain medication regularly, administering drug test at least once per quarter to ensure that Applicant does not relapse. Applicant has passed all of his drug tests.¹¹

In 2012, Applicant returned to employment as a federal contractor and was required to complete a security clearance application. He sought advice from his sponsor, a retired Marine master sergeant, who also dealt with drug use while having a clearance, about the falsification of his 1989 security clearance application. Applicant admitted that, at the time, he did not disclose use of illegal drugs because he was afraid of losing his job. Applicant's sponsor encouraged him to tell the truth. Applicant disclosed his drug use on his October 2012 security clearance application and provided detail about his history of drug use during his December 2012 background interview. Applicant considers the disclosures a necessary action in his 12-step program. He believes the disclosures are form of making amends to the Government for his past misconduct.¹²

Those close to Applicant, his father, his sponsor, and a former co-worker, all of whom testified at the hearing, have all noticed significant changes in him. All have noted increased maturity, selflessness, and a deep-rooted commitment to sobriety. Several other co-workers, including his facility security officer (FSO), wrote letters on Applicant's behalf. Each is aware of Applicant's past struggles with illegal drugs and they respect him for the work he has done over the past few years to achieve and maintain sobriety. Applicant is considered honest, reliable, and trustworthy by his co-workers.¹³

Applicant has been sober for six years and has been participating in NA for five years. Applicant is proud of his sobriety and works diligently to protect it. Although Applicant has not attended individual counseling since 2011, he continues to display a high level of self-awareness. He is able to clearly articulate his triggers and apply the tactics to combat them, including expressing negative emotions, ongoing NA

¹⁰ Tr. 32, 34-37, 39, 51-53, 84-87, 92.

¹¹ Tr. 55, 69-71; AE N, P-Q.

¹² Tr. 89-92; GE 2.

¹³ Tr. 74-75, 78, 80-82, 87, 96; AE C-K.

participation, regular communication with his sponsor, and being open about his struggles with addiction.¹⁴

Policies

When evaluating an applicant's suitability for a security clearance, the 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, which are used in evaluating an Applicant's eligibility for access to classified information.

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 favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon 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 EO 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." See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Drug Involvement

Use of an illegal 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.¹⁵ Applicant admits a history of disqualifying drug use in high school, college, and most

¹⁴ Tr. 45-46, 51, 56-57, 94.

¹⁵ AG ¶ 24.

recently, regular use of methamphetamines between 2008 and 2010, after being granted a security clearance in 2000.¹⁶

Applicant has presented sufficient evidence to mitigate the drug involvement concerns. Applicant sought and completed counseling that focused on his substance abuse. He has demonstrated intent not to use drug in the future¹⁷ and has established an appropriate period of abstinence. In addition, Applicant has made himself even more accountable by sharing his drug issues with his family and several co-workers, creating another level of sobriety support. With the help of his primary care physician, Applicant's ADHD is monitored and medicated, reducing the likelihood that Applicant will return to illegal drugs to medicate the disorder. He submits to regular drug testing as part of his pain management regime. Most important, Applicant understands his triggers and has developed coping skills to deal with them when they arise.

Criminal Conduct

Criminal activity calls into question a person's ability or willingness to comply with law, rules, and regulations, as well as a doubts about a person's judgment, reliability, and trustworthiness.¹⁸ Applicant admits to using illegal drugs between 1980 and 1989, and again from 2008 and 2010, which is admission of criminal conduct even though his illegal drug use resulted in one criminal incident.¹⁹ In 2009, Applicant was arrested on several drug charges to include driving under the influence of a dangerous drug (methamphetamine) and possession of drug paraphernalia. He entered a guilty plea to lesser charges.²⁰

However, the 2009 incident is mitigated by the passage of time and no longer casts doubts on the Applicant's reliability, trustworthiness, or good judgment because of the work Applicant has done to achieve and maintain sobriety.²¹ Applicant's sobriety maintenance is also strong evidence of successful rehabilitation.²² He has not engaged in any criminal conduct since 2009. He successfully completed drug treatment and was released from probation a year and a half early. He has maintained a positive employment record and, through NA, engages in constructive community involvement that encourages his ongoing sobriety and law-abiding conduct.

¹⁶ AG ¶¶ 25(a) and (d).

¹⁷ AG ¶ 26(b).

¹⁸ AG ¶ 30.

¹⁹ AG ¶ 31(c).

²⁰ AG ¶ 31(a).

²¹ AG ¶ 31(a).

²² AG 31(d).

Personal Conduct

An applicant's personal conduct becomes a concern when his actions show questionable judgment, an unwillingness to comply with rules or regulations, or raises questions about his ability to protect classified information.²³ The SOR alleges that Applicant falsified a 1989 security clearance application by deliberately failing to disclose his recreational use of illegal drug between 1980 and 1989. Applicant admits that he withheld the information because he was afraid of losing his job. The record contains sufficient information to mitigate this concern.²⁴

When completing his 2012 security clearance application, Applicant disclosed his most recent drug use and criminal activity. He disclosed the details of his prior drug use during his background interview. He understood the potential consequences of his actions, but also understood the importance and the need to provide full, frank, and candid disclosure to the Government on the issue. In doing so, Applicant showed greater maturity and an understanding of the security clearance process. Also, Applicant now views truthfulness and openness as a necessity in maintaining his sobriety. As a result, his almost 30-year-old omission is not reflective of his current security worthiness.²⁵

The SOR also alleges Applicant's past illegal drug use as disqualifying under the personal conduct guideline as it also shows poor judgement and a disregard for the law. However, Applicant's past drug use is mitigated for the reasons discussed in the drug involvement guideline, above. Furthermore, Applicant has disclosed the extent and consequences of his drug use to his sobriety support group, his sponsor, his family, and a number of his co-workers to include his FSO. As a result, the misconduct does not serve as a potential source of vulnerability of exploitation for Applicant.

Whole-Person Concept

Based on the record, I have no doubts about Applicant's judgment and trustworthiness. I have also considered the whole-person factors at AG ¶ 2. While those granted access to classified information are held to a high standard of conduct, they are not held to a standard of perfection. Nor is the purpose of a security clearance adjudication to punish applicants for past misconduct. All that is required is that an applicant's past is not indicative of a current inability to properly handle and protect classified information. Here, it is not. Applicant has taken responsibility for his past issues with illegal drugs and his falsification of a 1989 security clearance application. He has shown remorse for his past conduct and has changed his behavior to reduce the likelihood of future recurrence of the issues raised in the SOR. Clearance is granted.

²³ See AG ¶ 15.

²⁴ AG ¶ 16.

²⁵ AG ¶ 17(c).

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:

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| Paragraph 1, Drug Involvement: | FOR APPLICANT |
| Subparagraphs 1.a – 1.e: | For Applicant |
| Paragraph 2, Criminal Conduct: | FOR APPLICANT |
| Subparagraph 2.a: | For Applicant |
| Paragraph 3, Personal Conduct: | FOR APPLICANT |
| Subparagraphs 3.a – 3.b: | For Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is granted.

Nichole L. Noel
Administrative Judge