



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



In the matter of:)
)
) ISCR Case No. 15-04289
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin Dorsey, Esq., Department Counsel
For Applicant: John Berry, Esq.

12/27/2016

Decision

Lynch, Noreen A., Administrative Judge:

Applicant submitted a Questionnaire for National Security Positions (SF 86 Format) on October 17, 2014. On February 8, 2016, after reviewing the application and information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility, 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 eligibility for access to classified information.¹ The SOR detailed the factual reasons for the action under the security guidelines known as Guideline H for illegal drug use and Guideline E for personal conduct. Applicant timely answered the SOR and requested a hearing.

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 Department of Defense 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 replaced the guidelines found in Enclosure 2 to the Directive prior to September 1, 2006 and a copy of these guidelines was provided directly to the Applicant in this case.

The case was assigned to me on June 29, 2016. The hearing was held as scheduled on November 17, 2016. At the close of the evidence and after closing arguments, I proposed to the parties that this case was appropriate for a summary disposition in Applicant's favor. Applicant did not object. Department Counsel had 10 days to consider the matter and provided written notice that Department Counsel did not object.²

When Applicant was young he admits making poor decisions concerning illegal drug use, prescription drugs, and on two occasions driving under the influence of alcohol. He admitted to extensive use of marijuana and other drugs, including the purchase and sale. He worked in an industry where such use was prevalent. He does not use that as an excuse, but recognizes that association with such individuals between 2001³ and 2011 caused him legal problems⁴ and he did not think about potential negative consequences of his actions. He does not deny the seriousness of his case, but presents a case that clearly shows he has matured and changed his life. His use of illegal drugs decreased after 2007. His last use of illegal drugs and alcohol was in April 2011. He received his undergraduate degree and has been accepted into a graduate program. He obtained many certifications while working for a defense contractor. Applicant has had a stable employment and has received excellent performance reviews. He has not had any disciplinary issues. He participates in community activities. He does not frequent venues that might have customers who are using illegal drugs. He completed a treatment program. The program diagnosis of alcohol dependence and cocaine dependence⁵ has convinced Applicant that he cannot drink or use illegal drugs in the future. He signed a Statement of Intent not to use illegal drugs. He was credible when he testified that his prior behavior was illegal and destructive. He has no desire to retreat to that kind of destructive life. He has rehabilitated himself.

Applicant's alcohol and drug program service plans reflect his active compliance with all treatment groups. At the conclusion of the seven month 2011 program, Applicant received a very favorable prognosis for continued sobriety and healthy living. After the initial program, Applicant continued with individual counseling and a support group. He has five and one-half years of sobriety. He acknowledged that he had a temporary position in 2008 for two months, when he was still using some illegal drugs and that position required a public trust.

²Initially, at the hearing I asked Department Counsel if he objected. He quite correctly asked for time to consider the issue. He emailed me that he had no objection immediately, and I confirmed with him a few weeks later that he had no objection.

³In 2001, while in the military, Applicant tested positive for marijuana. He received a general discharge under honorable conditions on the basis of his misconduct.

⁴In 2003, he pled guilty to the misdemeanor of marijuana and was placed on six month probation.

⁵Applicant used cocaine at parties on multiple occasions from 2007 to 2011.

Members of Applicant's family have seen a great change in him since he has been sober. He helps his family. His father wrote a letter describing his behavioral changes. His brother testified that he trusts Applicant with his two young children. He has a support system within his family. Applicant's current supervisor testified that Applicant informed him during an interview about his past history of alcohol and drug use. Applicant was described as one of the top performers. He recommends him for a security clearance and cites to youthful mistakes and bad judgments.⁶

Applicant presented as a responsible, sincere, remorseful young man who wants a second chance. He does not minimize the seriousness of his past history. He disclosed his past history in full and specific detail to the government on his security clearance application in 2014. He admits his embarrassment about his illegal actions and takes full responsibility for all his prior actions. He presented overwhelming mitigation. The government conceded that Applicant presented substantial mitigation, despite the *prima facie* case that was established.

Based on the record evidence as a whole, I conclude that Department Counsel presented sufficient evidence to establish the facts alleged in the SOR under Guidelines H and E.⁷ I also conclude that Applicant presented sufficient evidence to explain, extenuate, or mitigate the facts admitted by Applicant or proven by Department Counsel. In particular, I conclude that the security concerns are resolved under the following mitigating conditions: AG ¶¶ 26(a), 26(b), and 26(d) and AG ¶¶ 17(d) 17(e) and 17(g).

The concerns over Applicant's history of drug use and alcohol do not create doubt about his current reliability, trustworthiness, good judgment, and ability to protect classified information. 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. Accordingly, I conclude that Applicant met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information. This case is decided for Applicant.

Noreen A. Lynch
Administrative Judge

⁶Applicant's personal conduct in 2009 concerning the computer keyboard that he took home for his use was heading to surplus and he forgot to ask for permission, which would have been granted. He had permission to take an old monitor already.

⁷Applicant took a disc from a trash can and when he arrived home he realized that it required a corporate license to use. Despite the fact that he had that license, he decided he should return the disc