



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



In the matter of:

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) ISCR Case No. 15-06481
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Applicant for Security Clearance

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: Scott L. Neinas, Attorney At Law, The Edmunds Law Firm

November 8, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing dated January 7, 2015. (Government Exhibit 1.) On April 27, 2016, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline H for Applicant. 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 within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing on May 26, 2016, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals. On July 25, 2016, the case was assigned to the undersigned Administrative Judge for processing. A notice of hearing was issued on August 14, 2016, scheduling the hearing for September 14, 2016. The Government offered five exhibits, referred to as Government Exhibits 1 through 5, which were received without objection. Applicant presented ten exhibits, referred to as Applicant's Exhibits A through J, which were also admitted without objection. Applicant called three witnesses and testified on his own

behalf. The record remained open until close of business on September 28, 2016, to allow Applicant to submit additional documentation. The transcript of the hearing (Tr.) was received on September 22, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 31 years old and married with two children. He has a high school diploma. He is employed by a defense contractor as an Alternate Comstat Custodian. He is applying for a security clearance in connection with his employment.

Paragraph 1 (Guideline H - Drug Involvement). The Government alleges that the Applicant is ineligible for clearance because he abuses illegal drugs.

Applicant admitted the allegations set forth under this guideline. (See Applicant's Answer to the SOR.) Applicant began working for his current employer in July 2006. He has held a security clearance since 2010.

Applicant has a history of illegal drug use that includes marijuana and cocaine. He began using marijuana at the age of 17 in about July 2003. Applicant graduated from high school, his friends left to college, and he stayed at home. His parents divorced, and he went to live with his father. He used marijuana as a social thing, about once a month. He frequently used it with his father. As time passed, his use of marijuana continued and increased. By January 2004, while attending community college, Applicant found that by using marijuana, he was able to focus better.

In September 2005, Applicant found it more difficult to function on a day to day basis, and he continued to use marijuana. At this point, he was using it almost daily, and felt addicted to the drug. (Tr. p. 74.) He continued to use marijuana at various frequencies, at times cutting back on his use, and other times trying to quit altogether, but always having to go back to marijuana to stabilize himself, until 2010 when he got married. Following his marriage in 2010, he completely stopped using marijuana for about six to eight months. (Tr. p. 78.) His wife did not use marijuana nor did she know that he used marijuana.

In 2012, Applicant was diagnosed with attention deficit hyperactivity disorder (ADHD). He felt addicted to marijuana as it helped him to slow his mind down. He used it on a regular basis, with his father, about two to three times a week. About this time, his wife was pregnant with pre-eclampsia. Their unborn son was premature and not growing. His wife and son's life's were in danger. The day his son was born, Applicant's wife was diagnosed with cancer. Applicant was self-medicating himself to deal with the stress. He states that he continued to use marijuana until April 2014. It was then that he decided that he was done with illegal drugs. After his wife completed chemotherapy and got better, and his son grew healthier, Applicant was tired of hiding his marijuana use from his wife. His illegal drug use took a heavy toll on his marriage

relationship and he needed help. Applicant, on his own, enrolled in an eight week, one-on-one drug rehabilitation treatment program, which he successfully completed.

In September 2005 Applicant also began using cocaine, which he continued until 2010. He used it with family members, including his brother, cousin and father. He states that he really did not enjoy it, but only used it for social purposes. He used cocaine about five separate times, and last used cocaine just before he got married in 2010. Applicant was working for his current employer and held a security clearance at that time.

Applicant testified that he stopped using illegal drugs in April 2014. He is now clean and sober. He explained that he is now an active member of his church and he has a support team that he trusts and can lean on. He now manages his ADHD without illegal drugs. He is on a Paleo diet, essentially no grains or processed foods. Two months after starting the diet he noticed the effects which have reduced his ADHD symptoms about 90 percent. (Tr. p. 92.) Applicant submitted the results of two drug screening tests he took in August 2016, which were negative. (Applicant's Exhibit C.)

A letter from the Applicant's supervisor states that in his opinion Applicant has demonstrated trustworthiness and excellence in his work performance. (Applicant's Exhibit H.)

Four witnesses, that include the Applicant's Christian counselor, the company's Senior Director of Security and Environmental Health, a friend and life group member, and a pastor, collectively confirmed their belief and observation that Applicant is reliable, trustworthy and responsible in every aspect. He is recommended for a security clearance. (Tr. pp. 25-67.)

Letters of recommendation from Applicant's worship leader, pastor, life group member, bible study teacher, and other friends collectively indicate that Applicant embodies the characteristics of someone who can be trusted. He is dedicated to his faith, family and friends. He is a hard worker, who is highly professional, and extremely honest. He is recommended for a security clearance. (Applicant's Exhibit E.)

A letter from Applicant's Christian counselor dated May 16, 2016, indicates Applicant came to her after being 3 months sober. He has continued with his drug treatment counseling for self improvement. She states that she is confident that Applicant can be trusted with any areas of confidentiality and security. (Applicant's Exhibit G.)

Applicant's performance appraisals from 2009 through 2014, reflect that he consistently fulfills his job requirements in every category. (Applicant's Exhibit H.)

POLICIES

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Guideline H (Drug Involvement)

The Concern. 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.

Conditions that could raise a security concern:

25.(a) any drug abuse;

25.(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution; or possession of drug paraphernalia;

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

Conditions that could mitigate security concerns:

26.(b) a demonstrated intent not to abuse drugs in the future, such as;

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

26.(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

In addition, as set forth in Enclosure 2 of the Directive at pages 18 - 19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which participation is voluntary;

- f. The presence or absence of rehabilitation and other permanent behavioral changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct, which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is “clearly consistent with the national interest” to grant an Applicant’s request for access to classified information.

The DoD Directive states, “The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination.” The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in illegal drug abuse that demonstrates poor judgment or unreliability.

It is the Government’s responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant’s conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government’s case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

In this case the Government met its initial burden of proving that the Applicant has engaged in drug involvement (Guideline H). The totality of this evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility. Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guideline H of the SOR.

Applicant's history of marijuana use began when he was 17 years old and continued until he was 29, just two years ago. He also used cocaine during a five year period between 2005 and 2010. His ADHD diagnosis and personal tragedies have also contributed to his instability but even so, the extent of this drug use is shocking. Applicant's pattern of use became so regular that he became dependant upon and addicted to marijuana. Most troubling is the fact that he used marijuana after having been granted a security clearance. Applicant knew at the time that his use of illegal drugs was against state and Federal law. He also knew that it was contrary to his company's policies and against DoD regulations. This past conduct clearly demonstrates a lapse in sound judgment and raises serious questions about his judgment, reliability and trustworthiness. Applicant states that since April 2014, after enrolling in and successfully completing a drug treatment program he has been clean and sober for 24 months.

Under Guideline H, Drug Involvement, Disqualifying Conditions 25.(a) *any drug abuse*; and 25.(c) *illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution; or possession of drug paraphernalia* 25.(g) *any illegal drug use after being granted a security clearance* apply. Mitigating Conditions 26.(b) *a demonstrated intent not to abuse drugs in the future, such as*; (4) *a signed statement of intent with automatic revocation of clearance for any violation*; and 26.(d) *satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional* are also applicable, but not controlling in this case.

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. Only recently has Applicant decided to stop using illegal drugs. He is commended for enrolling in a drug-treatment program and following up with Christian counseling to help maintain his drug free lifestyle. At this time, however, he has not earned the privilege of holding a security clearance. He has used illegal drugs consistently for over ten years, and has only been drug-free for about 24 months. Considering the extensive nature of his drug use that resulted in his addiction to marijuana, more time without drug use is required in order to demonstrate the level of maturity, character, judgment and responsibility, expected of an employee who works for the defense industry and has access to classified information. Applicant's past illegal conduct is still too extensive, too serious, too recent, and a clear indicator of poor judgment and unreliability that preclude him from security clearance eligibility at this time.

Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole-person assessment of poor judgment, untrustworthiness, unreliability, a lack of candor, an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

A security clearance is a privilege, not a right. In order to meet the qualifications for access to classified information, it must be determined that the Applicant is, and has been, sufficiently trustworthy on the job and in his everyday life to adequately protect the government's national interest. Based upon the conduct outlined here, this Applicant has demonstrated that he is not trustworthy, and he does not meet the eligibility requirements for access to classified information.

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the SOR.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

Subpara. 1.c.: Against the Applicant.

Subpara. 1.d.: Against the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge