



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-06000
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jennifer I. Goldstein, Department Counsel
For Applicant: *Pro Se*

January 30, 2008

Decision

TESTAN, Joseph, Administrative Judge:

On September 14, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to applicant detailing the security concerns under Guidelines E and J. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on October 1, 2007, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on October 31, 2007. Applicant did not respond to the FORM. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 41 year old employee of a defense contractor. He was granted a DoD security clearance in January 1998.

Applicant used marijuana with varying frequency, at times weekly, from around 1984 to 1995 or 1996. He used methamphetamine, with varying frequency, at times weekly, from around 1993 to sometime in 1995, and again from about 1998 to at least January 2003.

On or about January 8, 1994, applicant was arrested and charged with (1) Driving Under the Influence, and (2) Driving While Under the Influence of a Controlled Substance. He pleaded guilty to Count 1. At the time of his arrest, he was under the influence of methamphetamine.

On or about January 15, 2003, applicant was arrested and charged with Possession of a Controlled Substance - Methamphetamine, a felony. He pleaded guilty to the charge, but entry of judgment was deferred. When applicant presented proof to the court that he had completed a drug treatment program, his plea was withdrawn and the charge was dismissed.

Applicant falsified material facts on a Security Clearance Application (SCA) he executed in October 1994 when he denied he had ever used an illegal drug.

Applicant provided false material information in a signed, sworn statement he gave to the DoD in September 1995. Specifically, he lied when he stated his 1994 arrest occurred after he used methamphetamine for the first time, and when he stated his denial of drug use on the aforementioned SCA was due to an oversight.

Applicant falsified material facts on an SCA he executed in June 2005 when (1) in response to Question 24, he failed to disclose his 2003 drug-related charge, (2) in response to Question 27, he denied using any illegal drugs during the previous seven years, and (3) in response to Question 28, he denied ever using illegal drugs while holding a security clearance.

Applicant provided false material information to a DoD investigator in July 2006 when he stated he began experimenting with methamphetamine in 1993 and quit it "cold turkey" in 1995.

Policies

The President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information." (*Department of the Navy v. Egan*, 484 U.S. 518,527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive

branch. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” (Exec. Ord. 10865, Section 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, Paragraph E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, Paragraph E3. 1.15.) An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).) “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (Directive, Paragraph E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, Section 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

Analysis

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set forth in Paragraph 15 of the AG, and is 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.

Paragraph 16 describes conditions that could raise a security concern and may be disqualifying. Under Paragraph a., the “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,” may be disqualifying. Under Paragraph b., “deliberately providing false or misleading information concerning relevant facts to an employer,

investigator, security official, competent medical authority, or other official government representative,” may be disqualifying. Both disqualifying conditions are applicable because applicant intentionally provided false, material information (1) on two SCAs, (2) in a signed, sworn statement he gave to a DoD investigator, and (3) to a DoD investigator during an interview.

Paragraph 17 sets forth conditions that could mitigate security concerns. I considered each of them and conclude none apply.

Guideline J, Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set forth in Paragraph 30 of the AG, and is as follows:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

Paragraph 31 describes conditions that could raise a security concern and may be disqualifying. Under Paragraph a., “a single serious crime or multiple lesser offenses” may be disqualifying. And, under Paragraph c., an “allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted,” may be disqualifying. Applicant’s multiple falsifications were felonies under 18 U.S.C. 1001. Accordingly, these two disqualifying conditions are applicable.¹

Paragraph 32 of the AG sets forth conditions that could mitigate security concerns. I have considered each of them and conclude none apply.

“Whole Person” Analysis

Under the whole person concept, the AJ must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all the circumstances. An AJ should consider the nine adjudicative process factors listed at AG Paragraph 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) 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.” Under AG Paragraph 2c, the ultimate determination of whether to grant a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

¹Applicant’s alcohol and drug-related incidents were not alleged under this guideline.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant intentionally provided false material information to the Government on four occasions from 1994 to July 2006 in violation of 18 U.S.C. 1001. Given the recency and frequency of his dishonest and criminal conduct, there is no reason to believe he would tell the truth about his drug use if he were questioned about it today. Under the circumstances, applicant failed to mitigate the security concerns arising from his history of dishonest and criminal conduct.

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 E:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

JOSEPH TESTAN
Administrative Judge