



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



In the matter of:)
)
-----) ISCR Case No. 14-03341
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: Catie E. Young, Attorney at Law, Griffith, Young & Lass

January 28, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing dated February 5, 2014. (Government Exhibit 1.) On August 7, 2014, 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 responded to the SOR on August 27, 2014, and he requested a hearing before a Defense Office of Hearings and Appeals Administrative Judge. This case was transferred to the West Coast for handling and assigned to this Administrative Judge on June 24, 2015. A notice of hearing was issued on August 12, 2015, scheduling the hearing for September 21, 2015. At the hearing the Government presented three exhibits, referred to as Government Exhibits 1 through 3, which were admitted without objection. The Applicant presented nine exhibits, referred to as Applicant's Exhibits A through I, which were admitted without objection. He also

testified on his own behalf. The official transcript (Tr.) was received on September 29, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 36 years old and divorced with two children. He has an Associate's degree. He is employed by a defense contractor as a Senior Technical Account Manager. 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 2006. He does not know if they have a drug policy. (Tr. p. 52.)

From July 1994 to November 2013, off and on, and at various frequencies, over a period of nineteen years, Applicant has been involved with the use, possession, sale, and trafficking of illegal drugs. He began in high school using and purchasing marijuana and hanging around the wrong crowd. It was not long before he was using cocaine. As time passed he escalated to the use and purchase of methamphetamine, and he eventually became a methamphetamine drug dealer.

Applicant used marijuana from July 1994 to November 2013. He began using marijuana in high school at times about twice a week at social events. He continued using it until about 2000. During this period he also purchased it a couple of times a month for his own use. Applicant estimates that he has used marijuana about 100 times in his life. (Tr. p. 45.)

In 1999, Applicant began using and purchasing methamphetamine. He estimates that he has used it about 100 times in his life. (Tr. p 45.) In July 1999, Applicant had been using methamphetamine at a friends house. Applicant left the house and had driven to the store. He was standing outside of the store when he was arrested and charged with two counts of being Under the Influence of a Controlled Substance and one count of public intoxication. Applicant was sentenced to three years probation and fined.

In 1999, Applicant also began selling methamphetamine for profit. He was around people that were making money selling it, and he decided he could do it too. He believes he sold it a couple of times a week over a period of two or three years earning several hundred dollars a week. He obtained the methamphetamine from a dealer who was higher up the chain. Applicant explained that he carried a .38 handgun that he bought on the street for protection. The serial numbers on the gun had been scratched off. Applicant carried the weapon because he was scared that someone could come after him. (Tr. p. 48.)

In November 2001, Applicant was arrested and charged with: 1) multiple counts of being in Possession of a Controlled Substance; 2) Transporting and Selling Methamphetamine; 3) Possession of a Controlled Substance with a Firearm; and 4) Altering the Make, Model or Manufacturing number of the Firearm, all Felonies. Applicant's gun was confiscated by the police at the time of the arrest. (Tr. p. 49.) The charges were later reduced to a misdemeanor, Possession of a Controlled Substance, as part of a plea agreement, and he was sentenced to 60 days in jail and five years of probation. Applicant complied with all of the court's sentencing requirements and obtained an order of dismissal dated September 20, 2013. (Applicant's Exhibit C.)

Following his arrest in 2001, Applicant states that he decided to turn his life around and focus on his career. In 2002 he completed his AAS degree in Computer Technology and has taken additional classes toward his Bachelor's degree in Information Technology. However, as time passed, and he divorced, he started going out on the town to meet people and he began using marijuana again. He believes he used it about ten times between 2011 and November 2013. Applicant stated that the reason he stopped using marijuana in 2013 was because his company asked him to apply for a security clearance. Applicant states that he no longer associates with people who use illegal drugs.

Applicant now has a girlfriend that he plans to marry who does not use drugs. He states that he has learned his lesson and really regrets his past behavior. At no time does he believe he was ever addicted to any of the illegal drugs, and he never received any drug treatment. He states that he had no intention of ever being involved with illegal drugs again.

Applicant submitted a statement of intent indicating never to use illegal drugs again. In the event that he does, he consents to an automatic revocation of his security clearance. (Applicant's Exhibit A.)

Applicant submitted the results of a urinalysis he took on June 22, 2015, which were negative for any illegal drugs. (Applicant's Exhibit B.)

Applicant's performance appraisals for the period from June 2008 through April 2015 reflect that he has consistently received high performance ratings. Specifically, he "exceeds expectations" or "substantially exceeds expectations" in every category. (Applicant's Exhibit E.)

Letters of recommendation from Applicant's Manager to whom he reports, and other professional colleagues and friends, indicate that Applicant is a hard worker, top producer, and a valued contributor to the company. He is considered reliable and trustworthy by all who know him. He is highly recommended for a security clearance. (Applicant's Exhibits F and G.)

Applicant has received a number of awards, certificates, and commendations related to his work product. (Applicant's Exhibit I.)

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; and

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

Conditions that could mitigate security concerns:

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

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 extensive nineteen year history of drug involvement with marijuana, cocaine and methamphetamine is shocking. His past conduct clearly demonstrates a lapse in sound judgment and raises serious questions about his judgment, reliability and trustworthiness. Applicant was not simply a drug user, he was a drug dealer of a dangerous narcotic. He was so seriously ingrained in this criminal conduct that he carried an illegal weapon with him for protection for fear that he might be attacked. It is noted that he has not been involved in drug trafficking for about fourteen years. However, even after being arrested on two occasions for illegal drugs, he continued to use marijuana and has used marijuana as recently as two years ago. His recent use of marijuana calls into question his maturity, character, judgment, and ability to abide by the law.

This conduct shows extreme immaturity and raises serious security concerns about his reliability and trustworthiness. 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* apply. Mitigating Condition 26.(b)(4) a signed statement of intent with automatic revocation of clearance for any violation applies here, but is not controlling, given the extent of Applicant's illegal drug involvement.

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. Applicant is commended for his efforts to turn his life around. He has demonstrated that he is a valuable employee. Most importantly he has been working to rehabilitate his life after being incarcerated for serious crimes. At this time, however, he has not earned the privilege of holding a security clearance. He has not yet demonstrated the level of maturity, and responsibility, or the characteristics expected of an employee who works for the defense industry and wants access to classified information. Applicant's past illegal conduct is too extensive, too serious and 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