



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-02896

Appearances

For Government: Adrienne Strzelczyk, Department Counsel

For Applicant: *Pro se*

June 7, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing dated September 5, 2014. (Government Exhibit 2.) On November 2, 2015, 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 in writing on December 8, 2015, and elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to Applicant on or about January 11, 2016. Applicant received the FORM on January 26, 2016. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant submitted a reply to the FORM dated February 22, 2016, consisting of four documents, referred to as Applicant's Exhibits A through D. This case was

assigned to the undersigned on April 26, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 52 years old and unmarried. He has a doctorate degree in Philosophy with an emphasis in electrical engineering. He is employed by a university as a Professor and Chair of a department. He is seeking to retain 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 allegation set forth under this guideline. (See Applicant's Answer to the SOR.)

Applicant has been a faculty member at a university since 1996. He was initially hired as an Assistant Professor in 1996; was promoted to Associate Professor in 2001; then to full Professor in 2008; and in 2013, he was appointed as Department Chair, a position he currently holds. Prior to that he worked for a defense contractor for three years.

Applicant indicates that the university does not engage in a lot of classified work. On occasion, it sponsors a faculty member for a security clearance to work on classified research projects. Applicant was that sponsored faculty member. In 2004, Applicant received an interim clearance, which became final in 2006. For the past twelve years, he has held a security clearance for the purpose of conducting classified research projects. Applicant's education background indicates that he has attended three Universities in the United States, one of which is an Ivy League school. He ultimately obtained his doctorate degree related to his field of expertise. Applicant has no military service.

Applicant self-reported that he used marijuana on two occasions while possessing a DoD security clearance on his e-QIP dated September 1, 2014, and then he described the incidents to an investigator during his security background investigation in October 2014. Applicant explained that in January 2009, he was on travel in Amsterdam and he smoked a marijuana cigarette or "joint" at the coffee shop where he purchased it. Five years later, in January 2014, he consumed THC, which is a derivative of marijuana, via a drink in his hotel room. He explained that on each occasion, he used this drug out of curiosity. He rationalized that marijuana was legal in the state or country in which he purchased and used it. Applicant states that the first time he used marijuana he felt high. The second time he used it, by drink, he felt ill, which is one of the reasons he states that he does not plan to ever experiment with THC or marijuana again. Applicant claims that he has no future intent to ever use marijuana or any other illegal drug again.

Applicant claims that although he has held a security clearance since 2004, he has only used his clearance on three occasions. In September 2005, and March 2010, he attended a meeting and a workshop at the collateral secret level, and in May 2014, he reviewed a report in support of a proposal to fund a classified project. He states that his access to classified information has been limited, and he has yet to work on a classified project or program. All of his research as a university professor has so far been unclassified. (Applicant's Exhibit A.)

Applicant submitted a statement of intent dated February 23, 2016, wherein he indicates that he has no interest in ever using any illegal drug again. In the event that he does, he agrees that it should result in automatic and immediate loss of his security clearance. (Applicant's Exhibit B.)

A letter of recommendation from the Director of the Office of Export Controls, (which falls under the Office of the Vice President of Research and Innovation for the ten-campus University system), and who also serves as the University's Facility Security Officer, has known the Applicant for nine years, and recognizes him for his outstanding performance as a Professor. Namely, his dedication to his students. He is also commended for his extensive research record that is highly regarded by the University. Applicant is considered by all to be an expert in his field in both industry and academia. (Applicant's Exhibit C.)

A number of testimonials used for the purpose of a nomination package, which Applicant received from the University in 2015 for his exceptional mentoring of graduate students, collectively reflects that he is well respected by all who know him. He is dedicated in every sense of the word, as a professor, advisor, mentor and friend. He works harder than others, making more sacrifices, and giving more of his time to students in the effort to help them fulfill their goals. Overall, he consistently shows a sincere passion, commitment and dedication to his students, their field of expertise, and their future successes. (Applicant's Exhibit D.)

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; and

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 any drugs in the future, such as; (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 used marijuana or THC on two occasions while possessing a security clearance. Applicant is not a recent college graduate, without sufficient experience or the know-with-all to comprehend the law and the seriousness of his actions. Instead the Applicant is a 52-year-old, highly educated man with a doctorate degree, who has held a security clearance for the past twelve or more years. He obviously knew, or should have known, that the use of marijuana is against Federal law, the DoD and his university. To think otherwise is incomprehensible. This conduct is not only wrong and illegal, but it clearly demonstrates a lapse in sound judgment that is quite puzzling and

raises serious questions about his judgment, reliability and trustworthiness. His repeated use of marijuana, in 2009, and then again in 2014, both occurring while he travelled out of the state or country, calls into question his maturity, character, judgment, and ability to follow rules and regulations.

Applicant was hired by his most recent employer in November 1996, with the common sense understanding that he would follow university policy. Clearly, Applicant knew that his university prohibited the use of illegal drugs, and that it was against DoD policy and of course, against 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*; 25.(c) *illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution; or possession of drug paraphernalia, and* 25.(g) *any illegal drug use after being granted a security clearance* apply. Although Mitigating Condition 26.(b) *a demonstrated intent not to abuse any drugs in the future, such as; (4) a signed statement of intent with automatic revocation of clearance for any violation* is applicable, it is not controlling here. Applicant's misconduct is so egregious that it can only be mitigated by more of a demonstration of longer drug-free time.

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. He does not demonstrate the level of maturity, responsibility, or the characteristics expected of an employee who works for the defense industry and wants access to classified information. Applicant's illegal conduct is 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 sufficiently 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.

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