



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-04456

Appearances

For Government: Candace L. Garcia, Department Counsel
For Applicant: *Pro se*

May 31, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing dated October 14, 2014. (Government Exhibit 3.) On September 26, 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 October 9, 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 13, 2016. Applicant received the FORM on January 15, 2016. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant did not submit a reply to the FORM. This case was assigned to the undersigned on March 28, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 26 years old and married. He has a high school diploma and some college. He is employed by a defense contractor as a Engineering Technician. 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 September 2014. He has never held a security clearance.

Applicant has a history of illegal drug use that includes, marijuana, cocaine, LSD, mushrooms, and the stimulant, ecstasy. Applicant started using marijuana at the young age of sixteen, in April 2004. He smoked it socially, at various frequencies, on average about once every three to four months, until about July 2014. Applicant stated that his parents are aware of his marijuana use after they administered a drug test to him and told him that he tested positive. The date of the drug test is unknown. His marijuana use led him to experiment with other drugs until recently.

From May 2005 to about November 2013, Applicant used cocaine. He used it socially, on weekends for about a year, and then two to three times a year for the next four years. He also used hallucinogenic drugs including: LSD on one occasion; and mushrooms on at least one occasion, between April 2008 and August 2010. He used these drugs in social settings, and obtained them from a friend. Between the period from July 2010 to September 2010, Applicant used the stimulant, ecstasy at least two to three times.

In his most recent security clearance application dated October 14, 2014, Applicant admits to also using hashish, crack cocaine, rock, freebase, amphetamines, speed and crystal methamphetamine. He does not provide the frequency of use or purchase.

Applicant states that he has never felt addicted or dependent on any illegal drug. He has never sold, grown, or manufactured any illegal controlled substance. Applicant states that in his mid-twenties, he realized that using drugs was no longer something he wanted to be a part of. He wanted to be reliable and responsible for his spouse. He states that he disassociated himself with the people in his life who were a bad influence on him. In July 2014, he stopped using illegal drugs, which was about three months before he applied for his job in the defense industry. He apologizes for his past actions and has no intent to ever use illegal drugs again.

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:

None.

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 and vast variety of illegal drug use that began when he was sixteen years old and continued until recently is shocking. His use of marijuana at a young age obviously led him on to experiment with more serious drugs over time. His past conduct clearly demonstrates a lapse in sound judgment and raises serious questions about his judgment, reliability and trustworthiness. Up until November 2013, Applicant was still using cocaine, and he last used marijuana in July 2014. He was still associating with individuals who used illegal drugs. This recent use of cocaine and marijuana continues to call 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. None of the mitigating conditions are applicable.

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 his efforts to turn his life around. At this time, however, he has not earned the privilege of holding a security clearance. He has only been drug-free for about a year and a half. With the extensive nature of his drug use, more time without drug use is required in order to demonstrate the level of maturity, and responsibility, expected of an employee who works for the defense industry and has 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