



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 14-05978
)	
Applicant for Security Clearance)	

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

01/28/2016

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns about his drug use. However, doubts about his suitability for clearance, raised by his deliberate false official statements to the Government, remain. His request for access to classified information is denied.

Statement of the Case

On November 7, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain or renew eligibility for access to classified information as required for his job with a defense contractor. After reviewing the completed background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the national interest for Applicant to have access to classified information.¹

¹ Required by Executive Order 10865, as amended, and by the Directive.

On April 9, 2015, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline E (Personal Conduct) and Guideline H (Illegal Drugs).² Applicant timely responded to the SOR and requested a decision without a hearing.

On June 26, 2015, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM)³ in support of the SOR. Applicant received the FORM on August 26, 2015, and was advised he had 30 days from the date of receipt to submit additional information in response to the FORM. Applicant did not submit additional information in response to the FORM and the case was assigned to me on October 27, 2015.

Findings of Fact

Under Guideline H, the Government alleged that Applicant used marijuana between 2007 and late 2012 or early 2013 (SOR 1.a). Under Guideline E, it was alleged that Applicant deliberately made three false official statements in his EQIP when he failed to disclose the marijuana use alleged in SOR 1.a (SOR 2.a), or that he was arrested in 2008 for drunk and disorderly conduct (SOR 2.b), and that he was charged with operating (a motor vehicle) under the influence of liquor in March 2005 (SOR 2.c). (FORM, Item 1)

In response to the SOR, Applicant admitted all of the allegations therein. (FORM, Item 2) In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is a 32-year-old employee of a defense contractor, where he has worked as a welder since November 2013. He has never been married and has no children. Applicant is a recovering alcoholic. He abused alcohol in a significant and addictive way from the time he was 16 years old. At one point, he was drinking so heavily he thought he would die. At the behest of a relative, he stopped drinking on April 16, 2013, and entered a seven-day inpatient detoxification program the next day. Thereafter, he successfully completed an eight-week intensive outpatient treatment program. He has been sober since April 16, 2013. Applicant's use of marijuana was sporadic, and he used drugs only when he was intoxicated.

As alleged in the SOR, Applicant was arrested at least twice for alcohol-related offenses. At age 21, in 2005, he was charged with driving under the influence of alcohol. Three years later, he was charged with being drunk and disorderly after he became unruly in a bar and was thrown out. (FORM, Item 5)

The only adverse information Applicant disclosed in his EQIP concerned a 2010 discharge of his debts through Chapter 7 bankruptcy. During a January 2015 subject

² See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

³ See Directive, Enclosure 3, Section E3.1.7. The FORM included five exhibits (Items 1 - 5) proffered in support of the Government's case.

interview, and in response to DOD interrogatories, he stated that he omitted his drug use and his two arrests because he forgot to list them or did not understand the questions. However, in response to the SOR, he stated that he omitted the information out of fear of losing the opportunity to work at the defense contractor that sponsored his request for clearance. (FORM, Items 2 and 4)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁴ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

(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) the 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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOD based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.⁶ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁷

Because no one is entitled to a security clearance, applicants bear a heavy burden of persuasion to establish that it is clearly consistent with the national interest for them to have access to protected information.⁸ A person who has access to such

⁴ Directive. 6.3.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ Directive, E3.1.14.

⁷ Directive, E3.1.15.

⁸ See *Egan*, 484 U.S. at 528, 531.

information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.⁹

Analysis

Drug Involvement

Applicant used illegal drugs with varying frequency from 2007 until 2013. This information reasonably raises a security concern that is stated at AG ¶ 24 as follows:

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.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

More specifically, available information requires application of the disqualifying condition at AG ¶ 25(a) (any drug abuse (see above definition)). By contrast, Applicant's drug use has not recurred in almost three years and was a by-product of his alcoholism, which has been addressed through successful inpatient and outpatient treatment. The following AG ¶ 26 mitigating conditions apply:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) a demonstrated intent not to abuse any drugs in the future, such as: (3) an appropriate period of abstinence.

⁹ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

Available information is sufficient to resolve the security concerns under this guideline in favor of the Applicant.

Personal Conduct

Applicant deliberately withheld information that is relevant and necessary for an informed assessment of his suitability for access to classified information. The security concern this raises is expressed at AG ¶ 15, 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.

More specifically, the record requires application of the disqualifying condition at AG ¶ 16(a) (*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*).

I have also considered application of the pertinent AG ¶ 17 mitigating conditions. Inaccurate statements that result from mistake, misunderstanding, or forgetfulness, as Applicant claimed in his subject interview and interrogatory responses, are not disqualifying. The concern at AG ¶ 16(a) is whether the statement was made intentionally. Applicant admitted in response to the SOR that he deliberately withheld the information about his drug use and arrests because he was concerned he would not keep his job. Such conduct contrasts directly with the most basic tenet of the industrial security program; namely, that the Government must be able to trust that persons in whom sensitive information is entrusted will protect the national interest, even at the expense of one's personal interests. Applicant failed to meet this standard in his initial opportunity to demonstrate his trustworthiness. None of the AG ¶ 17 mitigating conditions apply.

In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guidelines E and H, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant's apparent success in overcoming his addiction to alcohol reflects positively on him and bodes well for his future success. Although he is not likely to again use illegal drugs, his willingness to conceal information to protect his own interests raises serious doubts about his judgment and reliability. Because the protection of the national interest is the principal goal of these adjudications, those doubts must be resolved against the Applicant.

Formal Findings

Formal findings 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 H:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a - 2.c:	Against Applicant

Conclusion

In light of all available information, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge