

KEYWORD: Drugs

DIGEST: Applicant's marijuana use from 1997 to 2006 generates a security concern. The majority of this use occurred while in college. He self-reported it on his security clearance application, and voluntarily consulted with a counselor who concluded it was diagnostically insignificant, and that the probability of future use was low. He has not smoked marijuana in more than a year. Applicant mitigated the security concern. Clearance is granted.

CASENO: 07-00086.h1

DATE: 08/09/2007

DATE: August 9, 2007

In re:)
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 -----) ISCR Case No. 07-00086
 SSN: -----)
)
 Applicant for Security Clearance)
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**DECISION OF ADMINISTRATIVE JUDGE
MARC E. CURRY**

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Maurice A. Bellan, Esq.

SYNOPSIS

_____Applicant’s marijuana use from 1997 to 2006 generates a security concern. The majority of this use occurred while in college. He self-reported it on his security clearance application, and voluntarily consulted with a counselor who concluded it was diagnostically insignificant, and that the probability of future use was low. He has not smoked marijuana in more than a year. Applicant mitigated the security concern. Clearance is granted.

STATEMENT OF THE CASE

On February 16, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) explaining why it was not clearly consistent with the national interest to grant or continue a security clearance. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended. Applicant answered the SOR on April 10, 2007 and requested a hearing.

I was assigned the case on May 14, 2007. DOHA issued a notice of hearing on May 23, 2007, scheduling it for June 18, 2007. During the hearing, I received one government exhibit, four Applicant exhibits, and the testimony of three Applicant witnesses. DOHA received the transcript on June 27, 2007.

FINDINGS OF FACT

_____The SOR admission is incorporated into the findings of fact. In addition, I make the following findings of fact.

Applicant is a 25-year-old single man who works for his employer as a manufacturing and design engineer. He graduated from college in May 2005 with a degree in mechanical engineering. His supervisor, the chairman, chief financial officer, and president of the company, describes him as “exceptionally mature beyond his years,” and “the go-to-guy” at work.¹ Also, he characterized Applicant as an outstanding engineer with an innate ability to quickly comprehend abstract engineering concepts, and apply them to everyday tasks.² Applicant recently earned a raise equal to 50 per cent of his salary.³

From age 16 to 25, Applicant smoked marijuana approximately twenty times.⁴ The majority of the use occurred in college. Since graduating from college he used it four times, twice during the summer of 2005, once in December 2005, and once in July 2006. The most recent use occurred after he had begun working with his current employer, and had completed a security clearance application.

¹Tr. 51.

²Tr. 54.

³Tr. 53.

⁴Tr. 25.

Applicant reported his marijuana use on his security clearance application.⁵ Later, he voluntarily consulted a chemical dependency counselor who concluded he did not meet the diagnostic criteria for marijuana abuse or dependence, and that the probability that he was “going to have a problem or going to use” was low.⁶ Consequently, he did not recommend Applicant attend counseling or receive any treatment. He did recommend that Applicant attend a 12-hour marijuana education course, “the lowest level” of intervention.⁷ He has begun the course.⁸

Applicant has executed an affidavit promising not to use marijuana, and agreeing to subject himself to random drug testing from his employer.⁹ His supervisor is aware of his past marijuana use. He has not used marijuana since July 2006.¹⁰

POLICIES

The adjudicative guidelines, as revised December 29, 2005, and implemented September 1, 2006, apply to the analysis of this case. In addition to brief introductory explanations for each guideline, they are divided into those that may be considered in deciding whether to deny or revoke an individual’s eligibility for access to classified information (disqualifying conditions) and those that may be considered in deciding whether to grant an individual’s eligibility for access to classified information (mitigating conditions).

An administrative judge need not view the adjudicative guidelines as inflexible rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching impartial, common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept,” all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future.

⁵Exhibit 1, Security Clearance Application, dated April 11, 2006, at 39.

⁶Exhibit D, Counselor’s Report, dated June 8, 2007. Testimony of Counselor–Tr. 89-90.

⁷Tr. 20, 90.

⁸Tr. 20; Tr. 91.

⁹Exhibit A, Statement of Intent, dated June 18, 2007.

¹⁰Tr. 15.

The following adjudicative guideline is raised:

Guideline H - 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 pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, are set forth and discussed in the conclusions below.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is "clearly consistent with the national interest."¹¹ In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

The government is responsible for producing evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

CONCLUSIONS

Drug Involvement

Applicant's drug involvement from 1997 to 2006 triggers the application of Drug Involvement Disqualifying Condition (DIDC) 19(a): *any drug abuse*. Applicant voluntarily reported it. He has only used it four times in the past two years, and the last use occurred in July 2006. He executed an affidavit in which he promised not to use marijuana in the future, and agreed to undergo a minimum of 12 screenings for illegal drugs for the next year.¹²

Also, Applicant voluntarily sought counseling. His counselor concluded his past use was diagnostically insignificant, and that the probability of future use was low.

Applicant's testimony was credible and introspective. He recognized the bad judgment displayed by smoking marijuana after completing the security clearance application, and appeared genuinely committed to abstinence. His testimony in conjunction with his supervisor's testimony convinced me that he is a talented, mature individual.

Drug Involvement Mitigating Condition (DIMC) 26 (a): *the behavior . . . does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*, and DI MC 26(b)(4): *a*

¹¹See Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

¹²Exhibit A, Statement of Intent, executed June 18, 2007.

demonstrated intent not to abuse any drugs in the future, such as a signed statement of intent with automatic revocation of clearance for any violation, apply. Applicant has mitigated the drug involvement security concern.

Whole Person Concept

Although Applicant’s use in the past two years has been sporadic, it cannot be characterized as remote. The last two times occurred while working at his current job, and the most recent use occurred after he completed his security clearance application. Conversely, averaging the sporadic post-college use with the more frequent college and high school use, it never exceed three to four times per year. Also, he has no clinical problems with marijuana abuse or dependence, and the probability of him using it again is low according to the counselor.

Based upon the counselor’s observations, I conclude Applicant’s marijuana use was more indicative of immaturity rather than any physical or psychological compulsion. He is now a more mature person who is dedicated to staying drug free. Both the potential for coercion and the likelihood of recurrence is minimal.

Evaluating these whole person factors in tandem with Applicant’s credible testimony, and his outstanding work ethic, I conclude Applicant has mitigated the drug involvement security concern. Clearance is granted.

FORMAL FINDINGS

Paragraph 1 – Guideline H:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Marc E. Curry
Administrative Judge