

KEYWORD: Drugs

DIGEST: Applicant is a software engineer for a defense contractor. He unlawfully used marijuana and a prescription drug on multiple occasions between about 2002 and 2006, while a college student and a summer intern, and reported it on his security clearance application. Since then, he no longer associates with people involved with illegal drugs, and no longer lives in a college dormitory where his drug abuse occurred. He indicated his willingness to execute a statement of intent with automatic revocation of his clearance for any violation. However, his drug abuse was so extensive and continued for so long that not enough time has passed to demonstrate successful rehabilitation. Applicant failed to mitigate the security concerns arising from his history of drug involvement. Clearance is denied.

CASENO: 07-00422.h1

DATE: 08/16/2007

DATE: August 16, 2007

In re:)	
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-----)	ISCR Case No. 07-00422
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
MICHAEL J. BRESLIN**

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq. Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a software engineer for a defense contractor. He unlawfully used marijuana and a prescription drug on multiple occasions between about 2002 and 2006, while a college student and a summer intern, and reported it on his security clearance application. Since then, he no longer associates with people involved with illegal drugs, and no longer lives in a college dormitory where his drug abuse occurred. He indicated his willingness to execute a statement of intent with automatic revocation of his clearance for any violation. However, his drug abuse was so extensive and continued for so long that not enough time has passed to demonstrate successful rehabilitation. Applicant failed to mitigate the security concerns arising from his history of drug involvement. Clearance is denied.

STATEMENT OF THE CASE

On August 30, 2006, Applicant submitted an application for a security clearance. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992) (the "Directive"), as amended; and the new adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and implemented by the Department of Defense on September 1, 2006. On March 23, 2007, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision: security concerns raised under the Directive, Guideline H, Drug Involvement.

Applicant answered the SOR in writing on April 7, 2007. He elected to have the matter decided without a hearing.

Department Counsel submitted the government's case in a File of Relevant Material (FORM) dated June 4, 2007. On June 15, 2007, Department Counsel mailed a complete copy of the FORM to Applicant, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. On July 20, 2007, Applicant submitted an additional response for consideration. The case was assigned to me on August 13, 2007.

FINDINGS OF FACT

Applicant admitted the allegations in the SOR, with explanations. (Item 2; Item 5.) Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant is 23 years old. (Item 3 at 1.) He is an embedded systems software engineer for a defense contractor. (*Id.* at 3.) He was an Eagle Scout and a high achiever in high school.

Applicant attended college between about September 2002 and May 2006. (*Id.* at 3.) Friends offered him marijuana and he smoked it; at first his use was experimental, but gradually he became a regular user. (Item 5 at 2.) According to Applicant, his heaviest use occurred during his freshman

and sophomore years. (*Id.*) He estimates that he used marijuana between 25 and 60 times. (*Id.*) Applicant asserts he used marijuana only twice while home from college. (Item 5 at 2.) His marijuana use tapered off after 2004.

Applicant purchased a small quantity of marijuana (about one gram) for his personal use on two occasions in his sophomore or junior year. (Item 5 at 2; Additional Response at 2.) He had friends who sold marijuana; one two occasions he helped them make transfers, but did not receive any profit. (Item 5 at 2.)

On approximately six occasions between 2002 and 2006, Applicant purchased Adderall, an amphetamine-based prescription medication, at a total cost of about \$50.00. He used the drug, without a prescription, to stay awake to study for final exams and to attend parties.

While he was still in college, Applicant worked as a student engineer/intern for a major defense contractor between May and August 2005. (Item 3 at 4.) He reported his last use of marijuana occurred in March 2006. (Item 5 at 2.)

In August 2006, Applicant began working for a defense contractor. (Item 5 at 3.) On August 30, 2006, Applicant completed an SF 86, Security Clearance Application. (Item 3.) He reported using marijuana drugs during college as follows: three times during his freshman year; 30-40 times during the Spring of his sophomore year; once a month during his junior year; and 4-5 times during his senior year. He admitted helping friends with sales of marijuana on two occasions. He also reported using Adderall without a prescription about 7 times, as a study aid and as recreation. (Item 3 at 9-10.)

Applicant states he no longer associates with individuals involved in using or selling illegal drugs, and that he has no intention of ever being involved in the use, purchase, or sale of illegal drugs in the future. (Additional Response, at 2.) He indicated his willingness to execute a statement of intent with automatic revocation of his clearance for any violation.

POLICIES

The President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.” *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, are set forth and discussed in the conclusions below.

“The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance.” (AG, ¶ 2.) An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person. (*Id.*) An administrative judge should consider the following factors: (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 pertinent 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. (*Id.*)

Initially, the government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, ¶ E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, ¶ E3.1.15.) An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (Directive, ¶ E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, § 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline H, Drug Involvement

The security concern relating to the guideline for Drug Involvement is set out in ¶ 24 of the new adjudicative guidelines.

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.

“Drug abuse” is defined as “the illegal use of a drug or the use of a legal drug in a manner that deviates from approved medical direction.” (AG, ¶ 24(b).)

Under ¶ 25(a) of the Directive, “any drug abuse” is potentially disqualifying. Applicant admitted wrongfully using marijuana, an illegal drug, and abusing Adderall, a prescription medication, on multiple occasions while a college student and a summer intern for a defense contractor between about 2002 and 2006. The evidence raises this potentially disqualifying condition.

Paragraph 25(c) of the Directive provides that “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution” may raise security concerns. Applicant admitted purchasing marijuana two times and buying Adderall for his personal use on about six occasions. He also helped friends complete sales of marijuana on two other occasions, although he did not receive a profit. The evidence also raises this potentially disqualifying condition.

Under the Directive, it is possible to mitigate the security concerns arising from involvement with illegal drugs. Paragraph 26(a) may apply where “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.” In this case, Applicant’s use of illegal drugs was relatively recent; he stopped using marijuana in about March 2006 and applied for a security clearance in August 2006. Moreover, his usage was not “infrequent,” considering his reported usage during his sophomore and junior years of college. He used illegal drugs for so long that it cannot be fairly described as experimentation or a result of unusual circumstances. Considering all the evidence, I conclude this potentially mitigating condition does not apply.

Under ¶ 26(b), it may be mitigating where the evidence shows “a demonstrated intent not to abuse any drugs in the future,” such as:

- (1) disassociation from drug-using associates and contacts;
- (2) changing or avoiding the environment where drugs were used;
- (3) an appropriate period of abstinence;
- (4) a signed statement of intent with automatic revocation of clearance for any violation.

To his credit, Applicant indicated he no longer associates with people involved with illegal drugs, and he no longer lives in a college dormitory where his drug abuse occurred. Additionally, he indicated his willingness to execute a statement of intent with automatic revocation of his clearance for any violation. These factors tend to support this potentially mitigating factor. I am not persuaded, however, that an appropriate period of abstinence has passed; I note Applicant used multiple drugs for about four years, and continued using marijuana even after he worked as a student intern for a defense contractor during the summer of 2005. The period of abstinence is relatively short by comparison.

Whole Person Concept

I considered carefully all the potentially disqualifying and mitigating conditions in this case in light of the "whole person" concept, keeping in mind that any doubt as to whether access to classified information is clearly consistent with national security must be resolved in favor of national security. Applicant's admissions reveal a pattern of substantial drug abuse, continuing for about four years. Applicant has not presented any evidence of completion of a drug rehabilitation program, nor is his period of abstinence long enough to demonstrate a significant behavioral change. Considering all the evidence, I conclude Applicant has not met his burden of demonstrating that it is clearly consistent with the national interest to grant him a security clearance. Although the evidence of Applicant's rehabilitation is insufficient at this time, with the passage of more time, continued good duty performance, and no further incidents of drug abuse, he may demonstrate persuasive evidence of his security worthiness.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
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Subparagraph 1.a-e:	Against Applicant
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DECISION

In light of all of 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 Applicant. Clearance is denied.

Michael J. Breslin
Administrative Judge