

KEYWORD: Drugs; Personal Conduct

DIGEST: Applicant's drug abuse history, and the deliberate misrepresentation of that history, render him unsuitable for a security clearance. Clearance denied.

CASENO: 07-01093.h1

DATE: 09/27/2007

DATE: September 27, 2007

In Re:	)	
	)	
	)	
-----	)	ISCR Case No. 07-01093
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
JOHN GRATTAN METZ, JR**

**APPEARANCES**

**FOR GOVERNMENT**

Emilio Jaksetic, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's drug abuse history, and the deliberate misrepresentation of that history, render him unsuitable for a security clearance. Clearance denied.

## STATEMENT OF THE CASE

Applicant challenges the 26 April 2007 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of drug involvement and personal conduct.<sup>1</sup> He answered the SOR 14 May 2007, and requested a decision without hearing. However, Department Counsel requested a hearing. DOHA assigned the case to me 5 July 2007, and I convened a hearing 24 August 2007. DOHA received the transcript (Tr.) 4 September 2007.

---

## FINDINGS OF FACT

Applicant admitted the SOR allegations, except for ¶¶1.b., 1.d., and 2.a., each of which he denied because he claims he did not use cocaine in January 2006. Accordingly, I incorporate his admissions as findings of fact. He is a 33-year-old consultant employed by defense contractors since December 2000. He seeks to retain the security clearance he obtained in approximately January 2005

When Applicant applied for an industrial clearance in March 2003 (G.E. 1), he answered “yes” to question 25 (military police record, last seven years), and disclosed a non-judicial punishment he received in January 1999. He also answered “yes” to question 25 (illegal drug use, last seven years), and disclosed that he had used LSD five times between January 1998 and January 1999, cocaine five times between February 1999 and March 2002, and ecstasy ten times between January 2001 and January 2002. Applicant was interviewed by a government investigator in December 2003 (G.E. 3) and confirmed the listed drug abuse, stated his intent to refrain from future drug abuse, and was ultimately granted his clearance. During his interview, he confirmed that he usually bought the drugs he used in social settings.

In March 2006, Applicant executed a second clearance application (G.E. 2). He answered “yes” to question 27 (illegal drug use, last seven years), and disclosed that he had used ecstasy ten times between January 2001 and January 2002, and had used cocaine six times between February 1999 and January 2006. During an October 2006 subject interview (G.E. 4), Applicant stated he had not used any illegal drugs in the last two years. However, government investigators could not resolve the discrepancy, and he was re-interviewed in December 2006 (G.E. 4). He then stated—among several inconsistent answers—that he could have used cocaine in January 2006.

Applicant attributes the discrepancy in his stated dates of last cocaine use to his perceived pressure from government investigators to provide more exact dates. He attributes the January 2006 date of cocaine use on his March 2006 application to a typographical error. He insists that he has not used illegal drugs since the 2002 dates reported on his March 2003 clearance application. However, I found his testimony equivocal, evasive, and without credibility. Further, he provided no character evidence to support his claims that he no longer associates with the social contacts with whom he used drugs.

---

<sup>1</sup>Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended and modified—most recently in August 2006 (Directive).

## POLICIES AND BURDEN OF PROOF

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative 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. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline H (Drug Involvement) and Guideline E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>2</sup>

---

## CONCLUSIONS

\_\_\_\_\_ The government established a case for disqualification under Guideline H,<sup>3</sup> and Applicant failed to mitigate the security concerns. In reaching these conclusions, I find that Applicant used cocaine as late as January 2006, contrary to his answer and his claims at hearing.<sup>4</sup> His use and

---

<sup>2</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>3</sup>¶25.(a) any drug abuse. . . ; (c) illegal drug possession, including. . . purchase. . . ; (c) any illegal drug use after being granted a security clearance;

<sup>4</sup>I reject Applicant's claim that the January 2006 cocaine use reported by Applicant on his March 2006 clearance application was a typographical error, for several reasons. First, I infer that Applicant had a copy of his March 2003 clearance available for reference, as he provided a partial copy of this application in his answer. Second, the record evidence shows Applicant took some care in updating his March 2006 clearance application, as he deleted his non-judicial punishment and his LSD use from the application—both being now more than seven years past. Finally, in updating his cocaine use, he changed the date of last use from March 2002 to January 2006, and he

purchase of various illegal drugs between January 1998 and January 2006 are neither distant in time or infrequent.<sup>5</sup> His abstinence from drug use—just over 18 months—is inadequate to demonstrate an intent to refrain from drug use in the future.<sup>6</sup> I cannot conclude Applicant is unlikely to use illegal drugs in the future. Accordingly, I resolve Guideline H for Applicant.

The government also established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns. He deliberately misrepresented his date of last illegal drug use to the government.<sup>7</sup> He did so after apparently disclosing that date correctly on his March 2006 clearance application. However, his misrepresentation in October 2006, and his subsequent equivocations in December 2006, tended to affect the direction of the government’s investigation. Applicant’s conduct suggests he is willing to put his personal needs ahead of legitimate government interests. I resolve Guideline E against Applicant.

In terms of a whole person analysis, Applicant’s conduct raised serious concerns about his fitness for access to classified information. Consequently, he had a heavy burden to establish that he was otherwise eligible for access notwithstanding the adverse information documented in the record. However, aside from his continued denials of illegal drug use after January 2002, he offered no evidence of his work record, no character references, and no evidence of changed circumstances or lifestyle that I might reasonably rely on to surmount the adverse information and grant him access to classified information.

**FORMAL FINDINGS**

Paragraph 1. Guideline H:      **AGAINST APPLICANT**

---

Subparagraph a:	Against Applicant
Subparagraph b:	Against Applicant
Subparagraph c:	Against Applicant
Subparagraph d:	Against Applicant
Subparagraph e:	Against Applicant

---

changed the number of times used from five to six. I think it unlikely that both changes would be typographical errors. Further, I think it highly likely that Applicant would remember his January 2006 drug use when completing a clearance application in March 2006. In addition, Applicant conceded he could have used cocaine in January 2006 during his December 2006 subject interview.

<sup>5</sup>¶26.(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;

<sup>6</sup>¶26.(b). a demonstrated intent not to abuse any drugs in the future, such as; . . . (3) an appropriate period of abstinence;

<sup>7</sup>¶16.(a) deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph a: Against 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 Applicant. Clearance denied.

**John G. Metz, Jr.  
Administrative Judge**