

KEYWORD: Drugs; Personal Conduct; Criminal Conduct

DIGEST: Applicant's deliberate falsifications of his 23 June 2004 and 1 December 2005 clearance applications, and the drug abuse history he concealed, render him unsuitable for a security clearance. Clearance denied.

CASENO: 06-24005.h1

DATE: 08/23/2007

DATE: August 23, 2007

In Re:)	
)	
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SSN: -----)	ISCR Case No. 06-24005
)	
Applicant for Security Clearance)	

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

APPEARANCES

FOR GOVERNMENT

Gina Marine, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

_____Applicant's deliberate falsifications of his 23 June 2004 and 1 December 2005 clearance applications, and the drug abuse history he concealed, render him unsuitable for a security clearance. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 1 February 2007 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of drug involvement, personal conduct, and criminal conduct.¹ He answered the SOR 20 February 2007, and requested a hearing. DOHA assigned the case to me 20 June 2007, and I convened a hearing 30 July 2007. DOHA received the transcript (Tr.) 8 August 2007.

FINDINGS OF FACT

_____Applicant admitted the SOR allegations. Accordingly, I incorporate his admissions as findings of fact. He is a 30-year-old senior consultant employed by defense contractors since June 1997. He seeks to retain the security clearance he obtained fraudulently in July 2004.

When Applicant applied for an industrial clearance in June 2004 (G.E. 1), he deliberately concealed his drug use between 1996 and June 2004 by answering "no" to question 27 (illegal drug use, last seven years). In fact, he had a significant history of marijuana use from 1996 to June 2004, and had used hallucinogenic mushrooms between 2001 and February 2004, and opium at least once in 2000. Based on his false answers, Applicant was granted an interim secret clearance in July 2004. His clearance was transferred when he took employment with a new defense contractor in November 2005.

In December 2005, Applicant applied for a clearance upgrade to top secret/special compartment information (TS/SCI)(G.E. 2) and continued to conceal his drug use by answering "no" to questions 27 (illegal drug use, last seven years) and 28 (illegal drug use while possessing a security clearance). In fact, he had continued to use marijuana after being granted an interim secret clearance in June 2004, to at least a Christmas party in mid-December 2005—after he submitted his application for clearance upgrade. Applicant acknowledged that he falsified his clearance applications because he did not want his employer and the government to know about his drug abuse history.

In January 2006, Applicant was scheduled for a lifestyle polygraph required by another government agency in conjunction with his December 2005 application for an upgraded clearance. During the pre-examination interview, he categorically denied having used illegal drugs. However, after the polygrapher began the examination, she stopped the examination because Applicant was visibly nervous about the drug questions. Applicant then disclosed that he had used illegal drugs, but was too nervous to provide details. The polygraph was rescheduled for February 2006 with a different polygrapher. During the pre-examination interview, Applicant disclosed the full nature and

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

extent of his drug abuse, and the polygrapher was satisfied with the examination results. In June 2006, the government agency denied the requested access to SCI because of Applicant's drug use and his falsifications of his drug abuse history (G.E. 3).

Applicant accepts full responsibility for his drug use, and acknowledges the invalidity of his past rationalizations: He was under a lot of cultural pressure from his parents to excel in college, but he had poor grades. Drug use allowed him to explain his poor grades to himself. He did, however, understand that drug use was illegal and prohibited by college, employer, and governmental policies.

Applicant states that he has not used any illegal drugs since December 2005, and vows never to use illegal drugs again. He asserts that he no longer associates with most of the crowd that he used drugs with. However, he also used marijuana with his brother and his girlfriend-then-wife. She was a sporadic user with Applicant, but did not know the full extent of his marijuana use when she was not around. She stopped using marijuana in early 2006, when she became pregnant with their daughter, now nine-months-old. Applicant cites his new family obligations as further incentive to remain drug free. Applicant has disclosed his full drug history to his wife and his brother. Nevertheless, neither his parents nor his sister are aware of his drug history. The record contains no independent evidence of Applicant's work performance or character.

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), Guideline E (Personal Conduct), and Guideline J (Criminal 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.²

CONCLUSIONS

_____The government established a case for disqualification under Guideline H,³ and Applicant failed to mitigate the security concerns. Applicant's use and purchase of marijuana, use and purchase of hallucinogenic mushrooms, and use of opium are neither distant in time or infrequent.⁴ His abstinence from drug use—just over 18 months—is inadequate to demonstrate an intent to refrain from drug use in the future.⁵ I cannot conclude Applicant is unlikely to use illegal drugs in the future. Accordingly, I resolve Guideline H for Applicant.

The government established a case for disqualification under Guideline E and J, and Applicant did not mitigate the security concerns. He deliberately concealed his illegal drug use from the government.⁶ He did so knowing that his illegal drug use was prohibited by both company and governmental policies. But for the polygraph examination, he might never have disclosed the truth. Further, none of the Guideline E mitigating conditions apply. The concealed information was relevant to a clearance decision. Applicant's falsifications prohibited the government from evaluating his illegal drug use in a timely fashion, and at a time when such recent drug use would have raised significant security concerns. In addition, the government detrimentally relied on Applicant's falsifications in granting his clearance. Finally, his disclosure of illegal drug use in February 2006 was neither prompt nor forthright. Indeed, for practical purposes, it was forced from him.

Applicant's Answer clearly establishes that he intended to conceal his illegal drug use from the government and effect the course of his background investigation. This conduct violated 18 U.S.C. §1001,⁷ whether he was successful in effecting the course of his investigation or not. However, in this case his falsifications did influence the investigation, and he was granted his clearance.

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

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

⁴¶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;

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

⁶¶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. . . ;

⁷¶31.(a) a single serious crime or multiple lesser offenses; (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;

Applicant's failure to disclose his illegal drug use demonstrates a lack of candor required of cleared personnel. The government has an interest in examining all relevant and material adverse information about an Applicant before making a clearance decision. The government relies on applicants to truthfully disclose that adverse information in a timely fashion, not when it is perceived to be prudent or convenient. Further, an applicant's willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the government relies on to perform damage assessments and limit the compromise of classified information. Applicant's conduct suggests he is willing to put his personal needs ahead of legitimate government interests. I resolve Guideline E and J against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline H: AGAINST APPLICANT

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- Subparagraph a: Against Applicant
 - Subparagraph b: Against Applicant
 - Subparagraph c: Against Applicant
 - Subparagraph d: Against Applicant
 - Subparagraph e: Against Applicant
 - Subparagraph f: Against Applicant
 - Subparagraph g: Against Applicant
 - Subparagraph h: Against Applicant

Paragraph 1. Guideline E: AGAINST APPLICANT

- Subparagraph a: Against Applicant
- Subparagraph b: Against Applicant
- Subparagraph c: Against Applicant

Paragraph 2. Guideline J: 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**

