

KEYWORD: Drugs; Personal Conduct

DIGEST: Applicant is a 51-year-old employee of a defense contractor. Applicant used illegal drugs for many years while holding a security clearance. She lied about her drug use on security clearance applications, and in a statement provided for her background investigation. Clearance is denied.

CASENO: 05-01611.h1

DATE: 06/30/2007

DATE: June 30, 2007

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In re:	)	
	)	
-----	)	ISCR Case No. 05-01611
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
_____	)	

**DECISION OF ADMINISTRATIVE JUDGE  
EDWARD W. LOUGHRAN**

**APPEARANCES**

**FOR GOVERNMENT**

Julie R. Edmunds, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 51-year-old employee of a defense contractor. Applicant used illegal drugs for many years while holding a security clearance. She lied about her drug use on security clearance applications, and in a statement provided for her background investigation. Clearance is denied.

## **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On December 28, 2006, DOHA issued a Statement of Reasons<sup>1</sup> (SOR) detailing the basis for its decision—security concerns raised under Guideline H (Drug Involvement) and Guideline E (Personal Conduct) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense for SORs issued after September 1, 2006. Applicant answered the SOR in writing on February 28, 2007, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on March 21, 2007. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on April 10, 2007, and submitted an undated response in a timely manner. The case was assigned to another judge on May 29, 2007, and reassigned to me on June 22, 2007.

## **RULINGS ON PROCEDURE**

The Government made a Motion to Amend the Statement of Reasons, as follows:

- 1) The paragraph labeled as “Guideline E” is listed as paragraph “1.” Strike “1.” and replace with “2.”
- 2) In subparagraph 2.a. under Guideline E, strike “May 13, 2002 ” and replace with “March 11, 2002.”
- 3) In subparagraph 2.b. under Guideline E, strike “May 13, 2002 ” and replace with “March 11, 2002.”
- 4) In subparagraph 2.e. under Guideline E, change “15 uses of cocaine between 1996 and December 2004” to “15 uses of marijuana between 1996 and December 2004.”

Applicant did not object to the Motion to Amend the Statement of Reasons. The evidence supports the Motion to Amend the Statement of Reasons, and it is granted.

## **FINDINGS OF FACT**

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<sup>1</sup>Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).

Applicant is a 51-year-old employee of a defense contractor. She attended junior college for a short period, but does not have a degree. Applicant's husband passed away more than 10 years ago. She is not currently married. She has an adult child and grandchildren.<sup>2</sup>

Applicant first started using marijuana in high school in about 1975. She was about 18 years old at the time. Her next real involvement with marijuana was in 1978. Applicant smoked marijuana about 20 to 30 times in 1978 to 1979. She smoked marijuana about 50 to 60 times between 1979 and 1986. Applicant obtained a new job in 1986. Applicant has worked for the same company, or its successor, since 1986. Applicant did not use marijuana from 1986 through 1991.<sup>3</sup>

Applicant had a death in the family in 1991. Applicant started smoking marijuana again. Applicant stated the "marijuana helped ease the pain of [the] loss."<sup>4</sup> She smoked marijuana on at least a weekly basis from 1991 to 1992. Applicant and her husband separated for a period in about 1992. Her husband normally obtained their marijuana. Applicant severely cut down on her marijuana use between 1992 and 1995, using it on about ten occasions.<sup>5</sup>

Applicant has held a security clearance since at least 1993. Every time she used illegal drugs since that time, has been while holding a clearance. Her marijuana use increased in 1995, to at least a monthly basis.<sup>6</sup>

Applicant was hospitalized in 1996, after police responded to a domestic incident at her house. Applicant tested positive on a urine test administered for medical purposes. Applicant smoked marijuana the day of the incident.<sup>7</sup>

Applicant's husband passed away in about 1996. Her marijuana use declined after the death of her husband. Applicant smoked marijuana approximately 15 times from 1996 through December 2004. Applicant used cocaine on two occasions, in about 1997, and again in about 2000.<sup>8</sup>

Applicant was arrested for possession of marijuana in about July 2004. The marijuana was discovered in Applicant's vehicle during a traffic stop. Applicant and her passenger planned on

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<sup>2</sup>Items 4, 5; Item 6 at 2.

<sup>3</sup>Item 3; Item 5 at 2; Item 7 at 1.

<sup>4</sup>Item 7 at 1-2.

<sup>5</sup>Item 3; Item 7 at 2.

<sup>6</sup>*Id.*

<sup>7</sup>*Id.*; Item 10.

<sup>8</sup>Item 3; Item 7 at 2.

smoking the marijuana when they reached their destination. Charges were dismissed without a conviction.<sup>9</sup>

Applicant generally had marijuana provided to her. She estimates that she purchased marijuana on about ten occasions, and not since about 1996. On a few occasions, she purchased marijuana, and split the costs with friends. Her friends would give Applicant their money for their share, and Applicant would give them their share of the marijuana. Applicant never profited from any of these transactions.<sup>10</sup>

Applicant submitted a security clearance application on June 5, 2000. Appellant answered “No” to Questions 27 and 28. Question 27 asked:

Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.) amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.) hallucinogenics (LSD, PCP, etc.), or prescription drugs?<sup>11</sup>

Question 28 asked:

Have you EVER illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a position directly and immediately affecting the public safety?<sup>12</sup>

Applicant intentionally provided false answers to both of the above questions.

Applicant submitted another security clearance application on March 11, 2002. Appellant again answered “No” to the identical Questions 27 and 28.<sup>13</sup> This was an intentional falsification. Applicant provided false information about her drug abuse because of her fear of possible negative consequences such as the loss of her clearance or her job.<sup>14</sup>

Applicant was interviewed by a Special Agent of the Defense Security Service for her background investigation. She provided a signed statement in February 2004. She discussed her

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<sup>9</sup>Item 3; Item 7 at 5.

<sup>10</sup>Item 7 at 3.

<sup>11</sup>Item 4 at 8.

<sup>12</sup>*Id.*

<sup>13</sup>Item 5 at 7.

<sup>14</sup>Item 3; Item 7 at 7.

hospitalization and positive urine test in 1996. She wrote, “I have not had in my possession or used marijuana since that . . . weekend.”<sup>15</sup> This was an intentionally false statement, as addressed above.

Applicant states she has not used any illegal drugs since December 31, 2004. On several occasions between December 2004 and April 2005, Applicant was present when marijuana was being smoked. On more than one occasion, she passed a marijuana cigarette from one person to another, without smoking the cigarette.<sup>16</sup>

Applicant was re-interviewed in September 2005, and provided another statement. Regarding her future drug use, Applicant wrote:

I am certain that I will not use hard drugs in the future. I cannot state that I will never use marijuana again in the future. I agree with SA (-----) that perhaps there could be situations in the future when I might smoke marijuana again. I cannot predict when I would smoke marijuana again, but given my past history, the fact that I’ve smoked marijuana as recently as 31 Dec 04, the fact that I know people who smoke marijuana such as . . . , etc., I might smoke it [a]gain in the future.<sup>17</sup>

Applicant states she no longer associates with people who use marijuana. She spends much of her time with her grandchildren. She works on home improvements and volunteers. She also submitted evidence of positive job performance.<sup>18</sup>

## **POLICIES**

“[N]o one has a ‘right’ to a security clearance.”<sup>19</sup> As Commander in Chief, 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.”<sup>20</sup> The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”<sup>21</sup> An applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance. The clearly consistent standard indicates that security clearance determinations

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<sup>15</sup>Item 6 at 2.

<sup>16</sup>Item 3; Item 7 at 2.

<sup>17</sup>Item 7 at 6.

<sup>18</sup>Item 3; Applicant’s response to FORM.

<sup>19</sup>*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>20</sup>*Id.* at 527.

<sup>21</sup>Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

should err, if they must, on the side of denials.<sup>22</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>23</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.<sup>24</sup>

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in the Directive and AG ¶ 2(a).

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the conclusions section below.

## CONCLUSIONS

I have carefully considered 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**

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 the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

Applicant used marijuana and cocaine while holding a security clearance. She purchased marijuana and shared it with friends. These actions raise Drug Involvement Disqualifying Conditions (DI DC) ¶ 25(a) (*any drug abuse*), DI DC 22(c) (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*), and DI DC 25(g) (*any illegal drug use after being granted a security clearance*). She tested positive for marijuana on a 1996 urine test. DI DC 25(b) (*testing positive for illegal drug use*) is applicable. In her September 2005 statement, Applicant failed to unequivocally state that she would never use marijuana again. DI DC 25(h) (*expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use*) is established.

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<sup>22</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>23</sup>*Id.*; Directive, ¶ E2.2.2.

<sup>24</sup>Exec. Or. 10865 § 7.

The Drug Involvement Mitigating Conditions (DI MC) to consider in Applicant's case are DI MC 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*), and DIMC 26(b) (*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*).

In September 2005, Applicant would not commit to remaining drug-free. She now states that she no longer associates with drug users, and that she will not use drugs in the future. There is no evidence that Applicant has used illegal drugs since December 2004. She admitted she continued to be around marijuana until about April 2005, and she passed marijuana cigarettes without smoking the marijuana. That is not marijuana use, but it does constitute marijuana possession. Applicant used marijuana for many years, and cocaine on two occasions, while holding a security clearance. She lied about her drug use on a number of occasions because she was afraid it might affect her clearance or her job. Applicant stopped using drugs in the past for several years, and then started again. I do not find that Applicant has established DI MC 26(a). Applicant has submitted evidence that would, if credible, support the application of DI MC 26(b). Based on Applicant's previous statements, and the conduct described below under the personal conduct conclusions, I find Applicant not credible.

#### **Guideline E: Personal Conduct**

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.

Applicant intentionally failed to list her illegal drug use on her security clearance questionnaires, and she provided false information on a statement for her background investigation. This raises three Personal Conduct Disqualifying Conditions (PC DC). They are PC DC 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*), PC DC 16(b) (*deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative*), and PC DC 16(e) (*personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing . . .*).

Applicant's association with illegal drug users raises PC DC 16(g) (*association with persons involved in criminal activity*).

I have considered all the Personal Conduct Mitigating Conditions (PC MC) and I especially considered PC MC 17(a) (*the individual made prompt, good-faith efforts to correct the omission,*

*concealment, or falsification before being confronted with the facts), PC MC 17(c) (the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment), PC MC 17(d) (the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur), PC MC 17(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress), and PC MC 17(g) (association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations).*

Applicant lied about her drug use for many years in order to keep her security clearance. She finally revealed her drug use. She states she has stopped using drugs and no longer associates with people who do. PC MC 17(a) and PC MC 17(c) do not apply. PC MC 17(d) and PC MC 17(e) are partially applicable. PC MC 17(g) is applicable to SOR ¶ 2(f).

### **Whole Person Analysis**

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive and AG ¶ 2(a). I have also considered all the evidence, and every finding of fact and conclusion discussed above.

Applicant used illegal drugs for many years while holding a security clearance. She lied on many occasions in order to hide her drug use and keep her clearance. Applicant states she has not used illegal drugs since December 2004, and no longer associates with her drug-using friends and relatives. She has remained drug free for several years in the past, and then went back to using drugs. Even if Applicant is now telling the truth, with her extensive history of drug abuse interrupted with a lengthy period of sobriety, she cannot be trusted at this time to remain drug free. Additionally, with Applicant's extensive history of lying, it is difficult to accept anything she says at face value.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on her drug abuse and personal conduct.

### **FORMAL FINDINGS**



The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline H:                   AGAINST APPLICANT

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant

Paragraph 2. Guideline E:                   AGAINST APPLICANT

Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	Against Applicant
Subparagraph 2.e:	Against Applicant
Subparagraph 2.f:	For Applicant

### **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.

Edward W. Loughran  
Administrative Judge