

KEYWORD: Drugs; Personal Conduct

DIGEST: Applicant used marijuana from 1991 to 2004, even after applying for a security clearance. He credibly testified that he last used marijuana in August 2004, and he has no intention to use any illegal substance in the future. While he furnished information to the United States Government in a Security Clearance Application (SCA) that was incomplete, it was done inadvertently. Mitigation has been shown. Clearance is granted.

CASENO: 05-03941.h1

DATE: 01/12/2007

DATE: January 12, 2007

In Re:)	
)	
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SSN: -----)	ISCR Case No. 05-03941
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
MARTIN H. MOGUL**

APPEARANCES

FOR GOVERNMENT
Jennifer I. Goldstein, Esq., Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

Applicant used marijuana from 1991 to 2004, even after applying for a security clearance. He credibly testified that he last used marijuana in August 2004, and he has no intention to use any illegal substance in the future. While he furnished information to the United States Government in a Security Clearance Application (SCA) that was incomplete, it was done inadvertently. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

On September 21, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed a notarized response, dated October 5, 2005, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge.

This case was assigned to this Administrative Judge on August 3, 2006, to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on November 22, 2006, and the hearing was conducted on December 12, 2006.

At the hearing, Department Counsel offered three documentary exhibits (Government's Exhibits 1-3) and no witnesses were called. Applicant offered three documentary exhibits (Applicant's Exhibits A-C) and offered his testimony and that of his wife. The transcript (Tr) was received on December 20, 2006.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline H (Drug Involvement), and Guideline E (Personal Conduct) of the Directive. The SOR contains five allegations, 1.a. through 1.e., under Guideline H, and two allegations, 2.a. and 2.b., under Guideline E. Applicant admitted SOR allegations 1.a. through 1.e., and 2.a., and he denied 2.b. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents, and the testimony of Applicant and his wife, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 32 years old. He is married and has no children. Applicant has received a Masters Degree in Computer Science and a Bachelors Degree in Psychology. He is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Paragraph 1 (Guideline H - Drug Involvement)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has abused illegal substances.

Applicant used marijuana from approximately 1991 to 2004. The frequency of his use varied, from as often as three to five times a week in 1993 and 1994, to four times a month during 1994 to 1997, and in 1998 to 2000 he abstained completely. During the years 2001 to 2004 Applicant ingested marijuana 2 or 3 times a year. He purchased some of the marijuana that he used from friends. Applicant used marijuana after he completed a SCA on March 9, 2004, last using it on August 2004.

Applicant also used psilocybin mushrooms, on approximately three to five occasions, from 1993 to 2003. He also purchased some of the psilocybin mushrooms that he used.

Applicant testified credibly that after he met with an investigator of the Office of Personnel Management and signed an affidavit on November 18, 2004, he made a determination that he would not use marijuana or any other illegal substance in the future. His reasoning for this decision included the fact that he is now married and he is contemplating starting a family. Also he feels that his usage of marijuana is not worth damaging his career. In his affidavit, he stated that he had no intention of using marijuana or mushrooms in the future.

Applicant testified that since his decision to abstain completely from marijuana usage, he has been present where marijuana was being used and he was able to abstain from its usage without any difficulty. His wife also testified that Applicant has made a decision not to use marijuana in the future.

Finally, Applicant submitted into evidence two Drug Screen Results Forms (Exhibits A and C) that indicate no illegal drugs were present in Applicant on December 8, 2006, and October 6, 2005, the dates Applicant underwent drug testing.

Paragraph 2 (Guideline E - Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because his conduct shows questionable judgement, untrustworthiness, unreliability, and lack of honesty. This concern is based on Applicant using marijuana after completing a SCA, as discussed above, and allegedly knowingly furnishing incomplete and untruthful information to the Government in a SCA that he completed on March 9, 2004.

Question #24 of the SCA asked if Applicant had ever been charged with or convicted of any offense(s) related to alcohol or drugs. Applicant answered "No." Applicant did not list that he was arrested on July 19, 1994, and charged with Illegal Consumption of Liquor. He was found guilty of the charge, fined \$233 and placed on six months probation.

While Applicant admitted that he was arrested in 1994, he averred that his failure to include this arrest on his SCA was an inadvertent omission, and that he did not intend to conceal information from the Government. I find Applicant's explanation credible that he simply failed to remember this event as it had occurred approximately ten years before he completed the SCA, when he was twenty years of age.

Finally, Applicant submitted three letters of recommendation (Exhibit B), from three individuals who highly recommend Applicant as honest and trustworthy.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case.

As set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of drug usage, alcohol abuse and criminal conduct, and that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future."

The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

(Guideline H - Drug Involvement)

With respect to Guideline H, the Government has established its case. Applicant's improper and illegal drug abuse, including the use of marijuana and psilocybin mushrooms is of concern, especially in light of his desire to have access to the nation's secrets. The fact that Applicant used illegal substances, after applying for a security clearance must also be considered adversely. Applicant's overall conduct pertaining to his illegal substance abuse clearly falls within Drug Involvement Disqualifying Condition (DC) (E2.A8.1.2.1.), any drug abuse, and DC (E2.A8.1.2.2.), illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.

Since Applicant last used marijuana in August 2004, Applicant's conduct could be argued to come within Mitigating Condition(MC) (E2.A8.1.3.1.), the drug involvement was not recent. MC (E2.A8.1.3.3.) also applies because of Applicant's credible stated intention not to continue using illegal substances in the future.

In this case, the Government has met its initial burden of proving that Applicant used illegal drugs under Guideline H. However, Applicant, has successfully introduced evidence in rebuttal, explanation and mitigation. I find that the mitigating conditions are sufficient to overcome the Government's case against him. Accordingly, Paragraph 1, Guideline H, is concluded for Applicant.

(Guideline E -Personal Conduct)

With respect to Guideline E, the evidence establishes that Applicant furnished to the Government an incomplete answer in the SCA that he executed on March 9, 2004. However, I find that Applicant did not knowingly and willfully give untruthful information to the Government.

While Applicant's use of marijuana after completing a SCA does show poor judgement, it was done only on one occasion, and he testified that he has realized the folly of such conduct.

In reviewing the DCs under Guideline E, I conclude that no DCs apply because Applicant did not deliberately provided false and misleading information to the Government in a SCA. I resolve Paragraph 2, Guideline E, for Applicant

FORMAL FINDINGS

Paragraph 1. Guideline H: FOR APPLICANT

Subparagraph 1.a.: For Applicant
Subparagraph 1.b.: For Applicant
Subparagraph 1.c.: For Applicant
Subparagraph 1.d.: For Applicant
Subparagraph 1.e.: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant
Subparagraph 2.b.: 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.

Martin H. Mogul
Administrative Judge