

ISCR Case No. 05-07418

SSN: -----

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APPEARANCES

Julie R. Edmunds, Esq., Department Counsel

Pro Se

_____Applicant's 16-year history of drug abuse, and his failure to fully disclose it, as required, on several security clearance applications between 1999 and 2004 generate drug involvement, personal conduct, and criminal conduct security concerns that he failed to mitigate. Clearance is denied.

STATEMENT OF THE CASE

On March 1, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) explaining why it was not clearly consistent with the national interest to grant or continue a security clearance. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended. He answered the SOR on March 12, 2007, admitting all the allegations and electing to have the case decided on the written record.

Department Counsel mailed the government's file of relevant material (FORM) to Applicant on April 26, 2007. He received it on September 12, 2007. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He neither objected to any of the FORM submissions, nor filed any additional evidence to be considered. The case was assigned to me on November 30, 2007 requesting an administrative determination.

RULINGS ON EVIDENCE

1. Department Counsel's motion to amend SOR subparagraphs 2.c and 2.d by replacing "Department of Defense" with "Department of State" is granted.
2. Department Counsel's motion to withdraw SOR Paragraph 4 is granted.
3. Department Counsel's motion to amend the SOR by cross-alleging SOR subparagraphs 1.a through 1.i under SOR Paragraph 3 is denied.
4. I have excluded *sua sponte*, Item 10, a Department of State investigative report, from the record.¹

FINDINGS OF FACT

_____ Applicant admitted all of the allegations in the SOR, and I have incorporated them into the findings of fact. In addition, I make the following findings of fact.

Applicant is a 33-year-old married man with two children. The older child is 10 years old and the younger child is an infant. He is a painter and carpenter who works on long-term projects at U.S. embassies worldwide. He has a high school education, and he has held a security clearance intermittently since the mid-1990s.

Applicant began using marijuana in 1990, at age 16, smoking it approximately once every three months.² By 1992, he was smoking it once per month. His use grew increasingly sporadic between approximately 1993 and 2000, decreasing to a few times per year. Between 2000 and 2003,

¹Executive Order 10865, Section 5(a).

²Item 8 at 9.

he again began using it monthly.³ He has used marijuana less than 20 times between 2003 and 2006, the year he stopped.

Over the years, Applicant has participated as a ““middleman”” for selling marijuana.”⁴ His friends would ask him where to get some marijuana, and he would identify a supplier. He never sold it for profit.

In January 2007, when a security clearance investigator asked Applicant whether he would resume marijuana use in the future, he responded as follows:

I acknowledge that I will probably smoke marijuana in the future. I am not addicted to it. I don’t have to use it but the reality is that if it is offered to me in the future, I will take a puff of it.⁵

In his March 2007 Answer, Applicant stated, “I have chose [sic] not to smoke, and will choose not to do so in the future regardless of clearance loss.”⁶

Over the past 15 years, Applicant has also abused other illegal drugs, including hallucinogenic mushrooms and LSD between 1990 and 1991, cocaine on two occasions between 1991 and 2001, speed on one occasion in 1994, and ecstasy on one occasion in 1997. Once in approximately 1994, he abused Tylox, a prescription pain reliever.

In 1998, Applicant was involved in the theft of construction materials from an overseas, island military base. The material was located on the construction site of a company that was performing contract work for the military. Applicant’s friends stole the material from the base, and transported it to him. Then, Applicant and his friend unloaded the materials and stored it on Applicant’s boat. Later, Applicant and his friend used the materials to complete a construction project located near the base.

Subsequently, the material was reported stolen, and an investigation ensued. Applicant was charged with embezzlement and theft. Consequently, he was barred from the island for six months.⁷

In a 2007 interview with a security clearance investigator, Applicant admitted lying to the police officer who investigated the 1998 construction materials theft. Also, during the same 2007 interview, he admitted to lying to a security clearance investigator in 2000 about the 1998 theft and his history of drug abuse.

³Item 8 at 10.

⁴Item 8 at 11.

⁵Item 8 at 10.

⁶Item 3 at 7.

⁷*Id.* at 4.

When Applicant met with the police investigator in 1998, he had a security clearance, and was afraid any “admissions would negatively affect” it.⁸ When the security clearance investigator interviewed him in 2000, he was afraid that if he was fully forthcoming about the circumstances leading to the 1998 theft charge, he would not get the job for which he had applied.

In 1999, Applicant electronically submitted a security clearance application. He answered “no” in response to Question 27 (*Your Use of Illegal Drugs and Drug Activity 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.), or prescription drugs?*”) In response to the same question on three successive security clearance applications completed between 1999 and 2004, he also answered “no.” He falsified the applications “out of fear of not getting the clearance and/or job . . .”⁹

POLICIES

The adjudicative guidelines, as revised December 29, 2005, and implemented September 1, 2006, apply to the analysis of this case. In addition to brief introductory explanations for each guideline, they are divided into those that may be considered in deciding whether to deny or revoke an individual’s eligibility for access to classified information (disqualifying conditions) and those that may be considered in deciding whether to grant an individual’s eligibility for access to classified information (mitigating conditions).

Because the entire process is a scrutiny of a number of variables known as the “whole person concept,” all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. Specifically these are: (1) the nature 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 age of the applicant; (5) the extent to which the participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is “clearly consistent with the national interest.”¹⁰ In reaching this decision, I have drawn only those conclusions that are based on the evidence contained in the record.

The government is responsible for presenting evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

⁸Item 10 at 15.

⁹Item 8 at 15.

¹⁰See generally, Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

CONCLUSIONS

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.”¹¹ Here, Applicant’s drug abuse history, part of which coincided with the period that he held a security clearance, triggers the application of Drug Involvement Disqualifying Conditions (DI DC) 25(a), “any drug abuse,” DI DC 25(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.”

Applicant’s statement to an investigator that he may use marijuana in the future triggers the application of DI DC 25(h), “expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.” Although he later renounced this statement, its sincerity is undercut by his history of dishonesty demonstrated by the numerous false statements to law enforcement authorities and security clearance investigators over the years.

I do not conclude, however, that 10 U.S.C. §986(c)(2) applies. Under this statute, applicants who are unlawful users of, or addicted to controlled substances are disqualified from possessing a clearance. Although Applicant failed to demonstrate a clear and convincing commitment to discontinue drug use, he never expressly indicated he was currently using any drugs. Also, the government did not establish he was addicted to drugs. SOR subparagraph 1.k is resolved in Applicant’s favor.

I have considered the mitigating conditions, and conclude none apply. In light of Applicant’s extensive drug abuse history, his lack of credibility, and his use while holding a clearance, I conclude he failed to mitigate the drug involvement security concern.

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.” Also, “[o]f 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’s history of providing false information to police and security clearance investigators, and falsifying information on security clearance applications triggers the application of Personal Conduct Disqualifying Condition (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,

¹¹Adjudicative Guidelines (AG) ¶24.

award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities,” and 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.”

I have considered all of the mitigating conditions, and conclude none apply. Any positive inference generated by his January 2007 disclosure of the earlier falsifications, is greatly outweighed by the number of falsifications and the number of years it took for him to disclose them. Significant personal conduct security concerns remain.

Criminal Conduct

“Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.” Here, Applicant’s 1998 embezzlement and theft charges, and his multiple falsifications trigger the application of Criminal Conduct Disqualifying Condition (CC DC) 31(a), “a single serious crime or multiple lesser offenses.” Applicant’s criminal conduct was motivated by opportunism rather than outside pressure or coercion. Its nature undermines Applicant’s credibility. Consequently, any statements of remorse have little probative value. Lastly, he presented no evidence of rehabilitation. Applicant has failed to mitigate the criminal conduct security concerns.

Whole Person Concept

Applicant has abused drugs for nearly half of his life. During part of this time, he had a security clearance. He lied about his drug involvement during several security clearance investigations, and as recently as January 2007, said he would smoke marijuana in the future. Given the seriousness of the conduct, its recency, and his motivation for the conduct, in conjunction with his lack of credibility, the risk of recurrence remains unacceptably high. Clearance is denied.

FORMAL FINDINGS

Paragraph 1 - Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a - 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Paragraph 2 - Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a -2.h:	Against Applicant
Paragraph 3 – Guideline J:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	Against Applicant
Paragraph 4 - Foreign Influence	WITHDRAWN

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 is denied.

Marc E. Curry
Administrative Judge