

KEYWORD: Criminal Conduct; Drugs; Personal Conduct

DIGEST: Applicant's history of drug use and arrests, in tandem with his falsification of a 2004 security clearance application, generates a security concern which he failed to mitigate. Clearance is denied.

CASENO: 05-10293.h1

DATE: 04/24/2007

DATE: April 24, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 05-10293
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
MARC E. CURRY**

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

____ Applicant's history of drug use and arrests, in tandem with his falsification of a 2004 security clearance application, generates a security concern which he failed to mitigate. Clearance is denied.

STATEMENT OF THE CASE

On December 7, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating it was unable to find that it was 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 (Directive). Applicant answered the SOR on January 4, 2006, and requested a hearing.

The case was originally assigned to another administrative judge, and scheduled for November 16, 2006. Applicant failed to appear at the hearing, and later requested a continuance, which was granted on December 16, 2006. Two days later, the case was assigned to me. I issued a notice of hearing on March 2, 2007, scheduling it for March 22, 2007. The hearing was held as scheduled. During the hearing, I received four government exhibits,¹ and the testimony of one government witness, and one Applicant witness. DOHA received the transcript on March 30, 2007.

FINDINGS OF FACT

Applicant is a 47-year-old married man with one adult child and two adult stepchildren. He is a trucker who has hauled munitions for the armed forces over the years.

In 1979, Applicant was arrested and charged with grand larceny.² He was convicted and sentenced to serve one to ten years confinement. After serving ten months, he was paroled. In March 1981, Applicant was arrested and charged with burglary.³ The charge was later dismissed. In February 2003, he was arrested and charged with domestic battery and possession of a controlled substance. As part of a plea bargain, the prosecution dropped the domestic battery charge, and Applicant pleaded guilty to the drug charge, and was fined \$100.00.⁴

¹I denied Department Counsel's motion to admit Exhibit 5.

²Exhibit 3, FBI Identification Record, dated May 24, 2004, at 2; Tr. 57.

³*Id.*; Tr. 58.

⁴Tr. 53.

Over the years, Applicant has abused several drugs including “uppers,” “downers,” and marijuana. He began abusing them as a teenager in the mid-1970s. Although he stopped using uppers and downers in the late 1970s, he continued using marijuana until 2003.⁵

In February 2004, Applicant completed a security clearance application (SF 86). He failed to disclose relevant, material information, as required, about his past drug use, arrests, and personal finances. The following month, he met with a DSS agent. Under oath, he admitted falsifying the SF 86, explaining that he did not want to lose his job.⁶ Also, he told her that he abused marijuana in tremendous quantities, smoking up to ten joints per day, and that he had spent approximately \$100,000 on marijuana during his lifetime.⁷

At the hearing, Applicant denied intentionally falsifying the SF 86. He testified that his wife completed it incorrectly, and that he signed it without reviewing it.⁸ He also stated he did not recall telling the agent that he had spent \$100,000 on marijuana over the years,⁹ and contended that the estimation of his marijuana use provided to the agent was inaccurate because “at the time I gave [the agent] my statement, I really didn’t care whether I got a clearance or not.”¹⁰

After Department Counsel completed cross-examination of Applicant, Applicant rested his case, and walked out of the hearing before its completion.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines 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).

An administrative judge need not view the adjudicative guidelines as inflexible rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching impartial, common sense decisions.

⁵Tr. 30 - Testimony of Defense Security Services (DSS) Investigator.

⁶Tr. 39 - Testimony of DSS Agent.

⁷*Id.*

⁸Tr. 47.

⁹Tr. 54.

¹⁰Tr. 53.

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 and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future.

The following adjudicative guidelines are raised:

Guideline H - Drug Involvement: Improper or illegal involvement with drugs, raises questions regarding an individual’s willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

Guideline E - Personal Conduct: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Guideline J - Criminal Conduct: A history or pattern of criminal activity creates doubt about a person’s judgment, reliability and trustworthiness.

Conditions pertaining to these adjudicative guidelines that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, are set forth and discussed in the conclusions below.

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.”¹¹ 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.

CONCLUSIONS

Drug Involvement

Applicant’s extensive history of drug abuse triggers the applicability of Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1 (*Any drug abuse*), and DI DC E2.A8.1.2.2 (*Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*).

¹¹See Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

I have considered all of the mitigating conditions and conclude none apply. Although his use of “uppers” and “downers” no longer poses a security concern because of the length of time since the last time he abused them, he just stopped using marijuana less than three years ago. Given the tremendous volume of marijuana he used, and the length of time he smoked it, it is too soon to conclude that he has mitigated the security clearance concern.

Personal Conduct

Applicant’s omission of information regarding his drug use, arrests, and finances from his 2004 SF 86 raises the issue of whether Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2 (*The 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, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies. No evidence was presented that Applicant ever purchased or sold marijuana for his profit or as part of a wider criminal enterprise. PC DC 2 is inapplicable to Question 29.¹²

With respect to Questions 21, 24, 27, 36, 38, and 39 of the security clearance application, PC DC 2 applies without mitigation. During the hearing, Applicant provided testimony that either minimized his earlier statement to the investigator, shifted the blame for the omissions to his wife, or contradicted his earlier statement entirely. These omissions constitute a deliberate falsification.

Criminal Conduct

Applicant’s lifetime of criminal conduct triggers the application of Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1 (*Allegations or admission of criminal conduct, regardless of whether the person was formally charged*), and CC DC E2.A10.1.2.2 (*A single serious crime or multiple lesser offenses*). His criminal conduct has continued nearly uninterrupted from 1976 when he first used marijuana, to 2004, when he falsified the SF 86. In light of the extensive nature of his criminality, I conclude that none of the mitigating conditions apply.

Whole-Person Concept

Given the extent of Applicant’s marijuana abuse, his SF 86 falsifications, his lack of credibility displayed at the hearing, and the disrespect for the security clearance process that he demonstrated by walking out of the hearing, significant concerns remain with respect to his security clearance worthiness. Clearance is denied

FORMAL FINDINGS

¹²In the last 7 years, have you been involved in the illegal purchase, manufacture, trafficking, production, transfer, shipping, receiving, or sale of any narcotic, depressant, stimulant, hallucinogen, or cannabis for your own intended profit or that of another?

_____ Paragraph 1–Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.b.:	Against Applicant
Subparagraphs 1.c. through 1.d.:	For Applicant
Paragraph 2–Guideline J:	AGAINST APPLICANT
Subparagraph 2.a. through 2.d.:	Against Applicant
Paragraph 3–Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a. through 3.c.:	Against Applicant
Subparagraph 3.d.:	For Applicant
Subparagraphs 3.e. through 3.g.:	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 is denied.

Marc E. Curry
Administrative Judge