

KEYWORD: Drugs; Personal Conduct

DIGEST: Applicant is 33 years old and has been employed as a senior proposal specialist for a defense contractor since November 2003. Between 1993 and 1998, he used marijuana and cocaine. He also purchased cocaine between 1997 and 1998. Between 1995 and 1998, he used a prescription drug without medical direction at the time. He has not used unauthorized prescription drugs since 1998. He did not deliberately falsify material facts on his security clearance application. Applicant has mitigated the drug involvement and personal conduct security concerns. Clearance is granted.

CASENO: 05-13719.h1

DATE: 06/21/2007

DATE: June 21, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 05-13719
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
JACQUELINE T. WILLIAMS**

APPEARANCES

FOR GOVERNMENT

Gina Marine, Esq., Department Counsel
John Bayard Glendon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 33 years old and has been employed as a senior proposal specialist for a defense contractor since November 2003. Between 1993 and 1998, he used marijuana and cocaine. He also purchased cocaine between 1997 and 1998. Between 1995 and 1998, he used a prescription drug without medical direction at the time. He has not used unauthorized prescription drugs since 1998. He did not deliberately falsify material facts on his security clearance application. Applicant has mitigated the drug involvement and personal conduct security concerns. Clearance is granted.

STATEMENT OF THE CASE

On December 1, 2003, Applicant executed a Security Clearance Application (SF 86).¹ On November 9, 2006, the Defense Office of Hearings and Appeals (DOHA) declined to grant a security clearance and issued a Statement of Reasons (SOR)² 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. The revised guidelines were provided to Applicant when the SOR was issued.

On December 26, 2006, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on March 12, 2007. A Notice of Hearing was issued on March 14, 2007, scheduling the hearing for April 5, 2007. The hearing was conducted as scheduled. At the hearing, the Government submitted 1 exhibit, Ex. 1, and Applicant submitted 11 exhibits (Exs. A-K). All of the exhibits were admitted into the record without objection. The transcript (Tr.) was received on April 13, 2007.

FINDINGS OF FACT

Applicant admitted all the factual allegations under Guideline H, subparagraphs 1.a through 1.d. He also admitted the factual allegations under Guideline E, subparagraphs 2.a and 2.b. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is 33 years old and has worked as a senior proposal specialist for a defense contractor since November 2003.³ He graduated from high school in June 1992. Applicant attended different colleges while trying to attain his undergraduate degree. He experimented with drugs and was suffering from depression. His grades were poor, and he left a different college because he could not cope and attendance at the college was not a good fit. In 1998, he left college and moved back home with his parents. During the next two years, he wrote for a local newspaper.⁴ After working as a reporter, he returned to college and received a bachelor's degree from a well-known university in May 2002, at the age of 28.⁵ He was married in July 2004, and he has a daughter.

From 1993 to 1998, Applicant used marijuana approximately 30 to 40 times. During that same time frame, he used cocaine approximately 12 times. Between 1997 and 1998, he purchased

¹Ex. 1 (Security Clearance Application, dated December 1, 2003).

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

³Tr. 80-81.

⁴Tr. 24.

⁵Tr. 24.

cocaine approximately three to four times. He started smoking marijuana soon after he joined a fraternity at college.⁶

From 1995 until 1998, Applicant used the prescription drug Percoset, on approximately 5 to 10 occasions. The drug was not prescribed for his use by a medical professional. His friends supplied the Percoset. The last time that he used drugs was in November or December 1998.

In response to Question 27 on the December 1, 2003 SF 86, asking (*Your Use of Illegal Drugs and Drug Activity - Illegal Use of Drugs: 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?*), he answered “yes.” He listed his past use of marijuana and cocaine. He failed to disclose that he used Percoset on approximately 5 to 10 occasions between 1995 and 1998. The omissions of this fact was not deliberate. He testified that he did not deliberately provide false information when responding to this question. He did not recall having used the painkillers when completing the SF 86, so he did not record that information.⁷

In his answer to the SOR, he stated the following about using drugs:

With regard to my prior drug use, I can only say that I regret my behavior during that period of my life, which ended more than 8 years ago. While I lacked the knowledge and perspective to make responsible decisions in my early 20s, I am much better equipped to make more appropriate decisions now. As a 32-year-old husband and father, I am grateful for having gained the distance, knowledge, and maturity to handle my life in a more responsible manner, both for myself and for the people in my life who count on me.

Between 1998 and 1999, he saw two therapists for treatment of depression.⁸ Although there was a correlation between drug use and his depressions, he was not ordered to seek drug treatment.⁹

Since 2003, and continuing through June 2005, Applicant had an ongoing association with persons involved in criminal activity, namely the use of marijuana. He stated: “[i]n the past 18 months, I have seen these persons approximately six times, and on none of these occasions, to my knowledge, has any drug use occurred.”¹⁰

⁶Tr. 32.

⁷Tr. 32.

⁸Tr. 33.

⁹Tr. 33.

¹⁰Answer to SOR, dated December 26, 2006.

Applicant offered 10 character letters from friends, coworkers, and long-time friends.¹¹ His supervisor wrote that Applicant started work at their firm in October 2003, and she has supervised him since October 2005. She indicated: “[Applicant] is a very exemplary employee in his professionalism, demeanor, and ethical conduct. He is a very mature, dedicated, and trustworthy employee.”¹² He has known another person as a friend and colleague for over 12 years.¹³ This witness stated: “I have been privileged to watch him [Applicant] grow from a somewhat awkward and distracted student to a reliable and successful professional.” The other letters are similarly with glowing attestations to Applicant’s professionalism, integrity, honesty, and trustworthiness.

POLICIES

“[N]o one has a ‘right’ to a security clearance.”¹⁴ 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.”¹⁵ 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.”¹⁶ 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 should err, if they must, on the side of denials.¹⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹⁸ 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.¹⁹

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

¹¹Exs. A, C-K (character letters).

¹²Ex. C (Letter, dated April 3, 2007).

¹³Ex. D (Letter, undated).

¹⁴*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹⁵*Id.* at 527.

¹⁶Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

¹⁷ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹⁸*Id.*; Directive, ¶ E2.2.2.

¹⁹Exec. Or. 10865 § 7.

circumstances, the whole-person concept, along with the adjudicative process factors listed in listed in the Directive and AG ¶ 2(a).

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards, and I reach the following conclusions.

Drug Involvement

Drug involvement is a security concern because 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.

Applicant not only used marijuana and cocaine but he also purchased cocaine. He also used a prescription drug, on occasion, when he was not authorized to take this prescription drug. Thus, Drug Involvement Disqualifying Conditions (DI DC) ¶ 25(a) (*any drug abuse*) and DI DC ¶ 25(c) (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia*) apply.

Various factors can mitigate drug involvement security concerns. While at college, Applicant was a young, immature man who was using drugs as a coping mechanism. He went from college to college, not finding a good fit, and continued to use drugs. Although he began college in 1992, he did not graduate until 2002. While attending college, he took two years off and worked as a reporter, but the financial rewards were too meager and he returned to school. He finally saw that the life he created for himself was destructive. Applicant stopped using drugs in either November or December 1998. In 1998 and 1999, he finally was treated for his depression and coincidentally had stopped using drugs. Since 2003, and continuing through June 2005, Applicant had an ongoing association with persons who continued to use marijuana. In the past one and one-half years, he has seen those people on at least six occasions. As far as he knows, none of them used drugs in his presence. Consequently, Drug Involvement Mitigating Conditions (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 DI MC ¶ 26(b) (*a demonstrated intent not to abuse any drugs in the future, such as: (b)(3) (an appropriate period of abstinence)*) apply. Applicant has abstained from drug use for more than nine years and has ceased his friendship with drug users. Applicant has mitigated the Government's case. Allegations 1.a through 1.d of the SOR are found for Applicant.

Personal Conduct

Personal conduct under Guideline E is always a security concern because 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. Applicant did not deliberately falsify a material fact on his SF 86. I believe he was truthful and credible when he stated that he forgot to list that he had used a prescription drug

for recreational purposes. Thus Personal Conduct Disqualifying Condition ¶ 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*) does not apply. Allegations 2.a and 2.b of the SOR are found for Applicant

I have considered all the evidence in the case. I have also considered the “whole person” concept in evaluating Applicant’s risk and vulnerability in protecting our national interests. Applicant has gone from a distracted, drug-using student, to being a mature professional. His peers find him to have integrity. They also believe that he is honest and trustworthy. He ceased using drugs a little less than 10 years ago. He continues to grow professionally. He has been treated for his depression. He has turned his life around and his negative, drug-using behavior is part of his past and not a part of his future. Based on the evidence of record, it is clearly consistent with the national interest to grant Applicant a security clearance. For the reasons stated, I conclude Applicant is suitable for access to classified information.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline H (Drug Involvement):	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2. Guideline E (Personal Conduct):	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant

DECISION

In light of all of the circumstances in the case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Jacqueline T. Williams
Administrative Judge