

KEYWORD: Drugs

DIGEST: Applicant is vice president of contracts for a federal contractor. He abused illegal drugs over a ten-year period, mostly in high school and college. He stopped using illegal substances in August 2004, contemporaneous with receiving a substantial promotion from his employer with added responsibilities. He stated an intention not to use drugs in the future. He demonstrated more mature judgments as his responsibilities increased. Drug usage was not recent and he successfully mitigated the drug involvement security concerns. Clearance was granted. The government appealed. The Appeal Board remanded the decision. I again conclude that Applicant successfully mitigated the security concerns under Guideline H (drug involvement). Clearance is granted.

CASENO: 05-16318.h1

DATE: 06/30/2007

DATE: June 30, 2007

_____)	
In re:)	
)	
-----)	ISCR Case No. 05-16318
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

**REMAND DECISION OF ADMINISTRATIVE JUDGE
CHRISTOPHER GRAHAM**

APPEARANCES

FOR GOVERNMENT

Fahryn Hoffman, Esq., Department Counsel

FOR APPLICANT

Andrew F. Reish, Esq.

SYNOPSIS

Applicant is vice president of contracts for a federal contractor. He abused illegal drugs over a ten-year period, mostly in high school and college. He stopped using illegal substances in August 2004, contemporaneous with receiving a substantial promotion from his employer with added responsibilities. He stated an intention not to use drugs in the future. He demonstrated more mature judgments as his responsibilities increased. Drug usage was not recent and he successfully mitigated the drug involvement security concerns. Clearance was granted. The government appealed. The Appeal Board remanded the decision. I again conclude that Applicant successfully mitigated the security concerns under Guideline H (drug involvement). Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1960), as amended, DOHA issued a Statement of Reasons (SOR) on January 24, 2006 detailing the basis for its decision – security concerns raised under Guideline H (Drug Involvement) of the Directive. Applicant answered the SOR in writing on February 14, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on July 11, 2006. Notice of Hearing was dated August 25, 2006. I convened a hearing on September 19, 2006, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The government offered one exhibit, Applicant offered six exhibits, and all exhibits were admitted without objection. DOHA received the transcript (Tr.) on September 29, 2006.

A decision was entered on October 31, 2006. The government appealed. The Appeal Board remanded the case to me for a new decision on June 21, 2007.

APPELLATE ISSUES

The Appeal Board directed me to reexamine my conclusions, without reference to the outdated Adjudicative Desk Reference that appears on the DOHA website, found at page 5 and footnote 32 of the decision. The original findings of fact were not challenged.

FINDINGS OF FACT

Applicant admitted all allegations in the SOR.¹ He listed the incidents set forth in the SOR in his security clearance application.² He admitted this conduct during his testimony.³ These admissions are incorporated herein. In addition, after thorough and careful review of the evidence, I make the following findings of fact.

Applicant is a married, 27-year-old vice president of contracts for a federal contractor. He has a double major in business, and finance and international business.⁴

¹Answer to SOR, dated February 14, 2006, at 1; Tr. at 49.

²Government Exhibit 1 (Security Clearance Application (SF 86), dated January 7, 2005) at 8-9.

³Tr. at 57.

⁴Tr. at 11-17.

Applicant used marijuana with varying frequency between 1994 and August 2004.⁵ He purchased marijuana.⁶ He abused the prescription drug Ritalin⁷ that had not been prescribed for him from October 1995 to December 2001, and the prescription drug Percocet⁸ until 2000. He twice tried cocaine between 1999 and December 2001, and used hashish in 2000.⁹ Between March and May 1999, he twice used MDMA (Ecstasy).¹⁰ Between 1995 and 2000, he used psilocybin (mushrooms) and/or LSD at least five times.¹¹

The majority of Applicant's drug use occurred between 1994 and December 2001, when he was in high school and college. He used drugs in social settings, with friends at parties, just "hanging out."¹² After graduation, he only used marijuana. He has taken no drug education classes or treatment programs.¹³ He never went to school or work while under the influence of drugs.¹⁴ Applicant used drugs because of "youth, curiosity, being social," and for experimental purposes.¹⁵ He has not used any illegal substances since August 2004.¹⁶ His promotion to his current position was the "driving force" behind his decision to quit abusing drugs.¹⁷ "I was promoted. I now have people that report directly to me in my job. I've gotten a substantial salary increase. I bought a car. I bought a house. My wife is pregnant. These are the big changes in my life."¹⁸ He stated his intent not to use illegal drugs in the future.¹⁹

⁵*Id.*

⁶*Id.* at 68.

⁷*Id.* at 69.

⁸*Id.* at 75-76.

⁹*Id.* at 70-71.

¹⁰*Id.* at 76-77.

¹¹*Id.* at 73.

¹²*Id.* at 58.

¹³*Id.* at 57-81.

¹⁴*Id.* at 63-65.

¹⁵*Id.* at 81.

¹⁶*Id.* at 79-80.

¹⁷*Id.* at 83-84.

¹⁸*Id.* at 91.

¹⁹*Id.* at 93-94.

Two of Applicant's co-workers (one was his supervisor) testified that Applicant was "mature for his age and experience,"²⁰ had "impressive knowledge level for his job,"²¹ had "tremendous work ethic,"²² and "is reliable, trustworthy, and will maintain classified information."²³

POLICIES

"No one has a 'right' to a security clearance."²⁴ 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."²⁵ 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."²⁶ Each security clearance decision "must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy."²⁷ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."²⁸

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.²⁹ It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

²⁰*Id.* at 16.

²¹*Id.* at 17.

²²*Id.* at 17, 37.

²³*Id.* at 19, 37.

²⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²⁵*Id.* at 527.

²⁶Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

²⁷Directive ¶ 6.3.

²⁸ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²⁹*See* Exec. Or. 10865 § 7.

CONCLUSIONS

The government established its case under Guideline H. Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1. (*Any drug abuse*)³⁰ and DI DC E2.A8.1.2.2. (*Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*) are applicable, because Applicant admitted drug use, possession, and purchase.

Drug Involvement Mitigating Condition (DI MC) E2.A8.1.3.1. (*The drug involvement was not recent*) applies. Applicant has been drug free for over two years. The Directive does not define “recent.” In ISCR Case No. 04-12648 at 9 (App. Bd. Oct. 20, 2006), the Appeal Board:

declined to set any "bright-line" rule as to what constitutes "recent" under the Directive regarding illegal drug use. *See, e.g.,* ISCR Case No. 02-10454 (November 23, 2004) at p. 4. The Board has indicated the matter requires an Administrative Judge to evaluate the record evidence as a whole and reach a reasonable conclusion as to the recency of an applicant's conduct. *See, e.g.,* ISCR Case No. 02-22173 (May 26, 2004) at p. 4. The application of a mitigating condition like Guideline H Mitigating Condition 1 can depend upon a number of factors in addition to the simple passage of time. *See, e.g.,* ISCR Case No. 98-0611 (November 1, 1999) at p. 2. The interval of time presented in this case, slightly less than two and a half years, must be evaluated in light of other factors in the case.³¹

Most of Applicant’s 10-year drug usage occurred while he was in school. He has been drug-free for nearly two and one-half years. His lifestyle has changed. He is now a family man. And he has been given significant responsibilities by his employer. All of these factors work together to convince me to conclude that his drug use is not recent.

Also relevant is DI MC E2.A8.1.3.3. (*A demonstrated intent not to abuse any drugs in the future*). Applicant stated his intent not to use drugs in the future, and has demonstrated it for over two years. He has made the changes necessary in his life to mitigate his prior drug involvement. I conclude guideline H for Applicant.

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 eligible for a security clearance.”³² “Available, reliable information about the person, past and present, favorable and unfavorable, should be

³⁰E2.A8.1.1.3. Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

³¹ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 11 2006) (Judge did not err by concluding drug use not recent with passage of slightly less than two and a half years between last use and hearing) (citing ISCR Case No. 02-10454 at 4 (App. Bd. Nov. 23, 2004)). *See* ISCR Case No. 98-0611 at 2 (App. Bd. Nov. 1, 1999) (not error for Judge to find that last marijuana use nine months before close of record was not recent).

³²Directive ¶ E2.2.1.

considered in reaching a determination.”³³ In evaluating Applicant’s case, I have considered the adjudicative process factors listed in the directive.³⁴

In addition to the disqualifying and mitigating conditions, I considered the “whole person” concept in evaluating Applicant’s risk and vulnerability in protecting our national interests.³⁵ I considered his age (26), his education which includes two majors, his employment, and what might motivate him to stop his drug abuse. Candor with the government about a person’s negatives is the crux of a trustworthiness determination. If a person discloses the adverse information about himself, he may be trusted with confidential or classified information. This case speaks volumes about the honesty and integrity of the Applicant, which seems to be a *non sequitur*. The government is suggesting that Applicant is a druggie, that he is irresponsible, reckless, and untrustworthy. Yet, the reason for the hearing was because he was honest and demonstrated integrity. Applicant was completely truthful about his drug use, disclosing it on his security clearance application, admitting his usage in his answer to the SOR, and in his testimony.

The illegal use of drugs raises questions regarding an individual’s willingness or ability to protect classified information. Moreover, impaired ability while under the influence of illegal drugs increases the risk of an unauthorized disclosure of classified material. His drug use extended over a ten-year period, most of this time he was in high school or college. Applicant’s motivation to use drugs was peer pressure and a desire to be sociable. In the last three years, Applicant has made significant changes in his life. He married in 2003. He discontinued use of marijuana in 2004. He bought a car and a home. He received a major promotion from his employer, one that carries with it increased responsibility for himself and other employees, and compensation. Applicant is now 26 and is a more mature decision-maker. He stated an intent not to use drugs in the future.

I have carefully weighed the mitigating factors, the totality of the circumstances surrounding his decision to smoke marijuana until 2004, his honesty in revealing this information, his work ethic, his recent conduct, and his change in attitude against the seriousness of his misconduct. I have concluded that he would not act in a manner which would harm the government. There is little likelihood he could be pressured, coerced, exploited, or subjected to duress for his past conduct. I observed Applicant during the hearing, and especially during his testimony. I find his testimony to be believable and find him to be a sincere and credible witness, because he answered questions directly, completely, and honestly. I believe Applicant will remain drug free in the future. I, therefore, have no reasonable and persistent doubts about Applicant's willingness and ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. I conclude it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

FORMAL FINDINGS

³³*Id.*

³⁴*Id.*

³⁵*Id.*

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by E3.1.25 of Enclosure 3 of the Directive, are:

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
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant

DECISION

On remand, in light of all the circumstances presented by the record in this case, I find again it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Christopher Graham
Administrative Judge