

KEYWORD: Personal Conduct; Criminal Conduct

DIGEST: Applicant is 49 years old and works as a vice president for a defense contractor. He had security clearances in the past. On two separate occasions, he deliberately falsified material facts regarding his illegal drug use on his security clearance applications. He failed to accurately state the amount of marijuana, cocaine, hallucinogenics, and acid, he used during the previous 25 years. In 2003, he was denied access to Sensitive Compartmented Information by another government agency due to his illegal drug use while holding a security clearance and for providing discrepant information regarding his use of drugs. Applicant has not mitigated the personal and criminal conduct security concerns. Clearance is denied.

CASENO: 06-00833.h1

DATE: 03/30/2007

DATE: March 30, 2007

In re: _____ SSN: _____ Applicant for Security Clearance))))))))))	ISCR Case No. 06-00833
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**DECISION OF ADMINISTRATIVE JUDGE
JACQUELINE T. WILLIAMS**

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 49 years old and works as a vice president for a defense contractor. He had security clearances in the past. On two separate occasions, he deliberately falsified material facts regarding his illegal drug use on his security clearance applications. He failed to accurately state the amount of marijuana, cocaine, hallucinogenics, and acid, he used during the previous 25 years. In 2003, he was denied access to Sensitive Compartmented Information by another government agency due to his illegal drug use while holding a security clearance and for providing discrepant information regarding his use of drugs. Applicant has not mitigated the personal and criminal conduct security concerns. Clearance is denied.

STATEMENT OF THE CASE

On January 6, 2003, Applicant executed a Security Clearance Application (SF 86).¹ On November 6, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons under Guideline E (Personal Conduct) and Guideline J (Criminal Conduct) 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 granted or revoked.

In a written statement, dated November 19, 2006, Applicant responded to the SOR allegations and requested an in-person hearing. The case was assigned to me on February 1, 2007. A Notice of Hearing was issued on February 10, 2007, scheduling the hearing for February 28, 2007. The hearing was conducted as scheduled. At the hearing, the government offered six exhibits, Exs. 1-6, and Applicant offered one exhibit, Ex. A. All exhibits were accepted into the record without objections. The transcript (Tr.) was received on March 12, 2007.

FINDINGS OF FACT

Applicant denied all the allegations under Guideline E, personal conduct and Guideline J, criminal conduct. 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 49 years old and was a self-employed entrepreneur from 1990 until his firm was acquired by a federal defense contractor.² At the height of his flourishing technology business, he created more than 250 jobs.³ He currently works as a vice president for a defense contractor.⁴ In 1982 he received a master's degree in industrial engineering from a state university.⁵ In January 1995, he

¹Ex. 3 (Security Clearance Application, dated September 18, 2002 but executed on January 6, 2003). *See also* Ex. 1 (Security Clearance Application, dated and executed on August 23, 2001).

²Tr. 28.

³Tr. 19.

⁴Tr. 29.

⁵Tr. 30.

received a Secret clearance.⁶ He received a Top Secret clearance in January 2001. He was married in 1983 and has six children, aged 23 to 11.⁷

Applicant's involvement with illegal substances has been extensive, spanning 25 years, when he was between the ages of approximately 18 and 43.⁸ During this period, he used marijuana, cocaine, hallucinogenics, and acid. Much of his illegal drug involvement took place during times in his life when he had been entrusted with a government security clearance at both the Secret and Top Secret levels.

When he executed his SF 86 on August 23, 2001, in response to question 27 (*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 failed to disclose the following: (1) he used marijuana from 1994 to at least August 2001, and (2) he used marijuana approximately once per week in 1994 and approximately twice per week from 1995 to August 2001.

In a signed, sworn statement, dated September 25, 2001, to an authorized investigator of the Department of Defense, he falsified material facts in that he stated that he had used marijuana very occasionally over the previous 10 years. He indicated that he used marijuana most recently in about 2000 at a concert, he did not use any other illegal drugs, had not bought illegal drugs, and had no plans to use illegal drugs in the future. In truth, he failed to indicate: (1) he used marijuana, with varying frequency to include two times per week, to at least September 2001; (2) he purchased marijuana; and (3) he used cocaine from 1992 to 1993. He also stated the following regarding his use of marijuana:

I do not use any drugs, medical or illegal. I am a Christian man raising 6 children. However, over the last 10 years I have been in the presence of, and very occasionally puffed on marijuana.⁹

On January 6, 2003, he executed another SF 86, and in question 27 (the same question as that in the 2001 SF 86) asking about his use of illegal drugs, he failed to disclose the following: (1) he used marijuana, approximately two times per week, from 1996 to at least September 2001, and (2) he used marijuana while possessing a security clearance, granted on March 10, 1995.

⁶Ex. 3 (Security Clearance Application, dated September 18, 2002).

⁷Tr. 29.

⁸Ex. 4, *supra*, note 11.

⁹Ex. 2 (Sworn Statement of Subject, dated September 25, 2001).

Applicant testified that he understated his use of drugs in both SF 86s.¹⁰ When he was questioned as to whether he made false statements to the government, he testified:

Not intentionally false statements. That's not the way it happened. I didn't sit there and lie or say oh, I think I'm going to lie to the Government. It – it – you lie to yourself in these matters. And then, through the course of this, almost like counseling you end up kind of getting clear on everything. I did not intentionally lie.¹¹

On October 11, 2001 and January 6, 2003,¹² Applicant was interviewed for a security clearance by a representative of NSA (National Security Agency) Associate Directorate for Security and Counterintelligence. During the first interview, he elaborated on his drug use. At the 2003 interview, he revised the number of times he used marijuana. From 1995 to September 2001, he used marijuana approximately twice per week. He purchased it on approximately 10 occasions during that time period, paying no more than \$40 per purchase. When confronted with his use of illegal drugs while holding government clearances, Applicant stated “that he understood the policies prohibiting involvement with illegal drugs, but he didn't think the policies were ‘serious.’”

As a result of both his 2001 and 2003 interviews with NSA, in 2003, Applicant was denied access to Sensitive Compartmented Information (SCI) due to his illegal drug use while holding a security clearance and for providing discrepant information.¹³ This decision was affirmed on April 28, 2004.

At the hearing, Applicant stated the following about use of illegal drugs during the past 25 years:

When you're talking about personal drug use and you're a father of six and you're running a company and you're a leader in your community, these – types of things to the Federal Government is shameful. It is embarrassing. And – and an intelligent mind can concoct all kinds of reasons and rationale and all kinds of things to not reveal this because of the shame and embarrassment.¹⁴

Applicant's falsification of answers on his SF 86s, sworn statement, and interviews with NSA, could all be considered criminal activity, which constitutes a violation of federal law, Title 18, United States Code, Section 1001, a felony.

¹⁰Tr. 33; Exs. 1 and 3.

¹¹Tr. 34.

¹²Ex. 4 (Clearance Decision Statement, dated October 1, 2003).

¹³Ex. 4, *supra*, note 11; Ex. 5 (Notification of Denial of Access to SCI - Information Memorandum, dated October 16, 2003); Ex. 6 (Final Outcome of Appeal Case Memorandum, dated April 28, 2004).

¹⁴Tr. 39-40.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. 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. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.¹⁵ The Government has the burden of proving controverted facts.¹⁶ The burden of proof is something less than a preponderance of evidence.¹⁷ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.¹⁸ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁹

No one has a right to a security clearance²⁰ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."²¹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²² The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.²³ 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.

¹⁵ISCR Case No. 96-0277 (July 11, 1997) at 2.

¹⁶ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.

¹⁷*Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

¹⁸ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.

¹⁹ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.

²⁰*Egan*, 484 U.S. at 531.

²¹*Id.*

²²*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

²³Executive Order 10865 § 7.

CONCLUSIONS

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

Personal Conduct

Personal conduct is always a security concern because it asks the central question whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. The government has established a *prima facie* case for disqualification under Guideline E, personal conduct.

On two separate occasions, in 2001 and 2003, Applicant deliberately falsified relevant and material facts in his SF 86. In 2001 and 2003, he was interviewed by NSA. He finally divulged the real extent of his drug use at the 2003 interview. Thus, Personal Conduct Disqualifying Conditions (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*), E2.A5.1.2.3 (*deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination*), E2.A5.1.2.4 (*personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail*), and E2.A5.1.2.5 (*a pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency*) all apply here. None of the applicable Personal Conduct Mitigating Conditions apply. Applicant has not mitigated the government's case. Accordingly, allegations 1.a through 1.e of the SOR are concluded against Applicant.

Criminal Conduct

Criminal Conduct is always a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. The government has established a *prima facie* case for disqualification under Guideline J, criminal conduct.

The allegations under a criminal conduct security concern focus solely on the false statements Applicant provided in his SF 86s signed in 2001 and 2003, and his signed, sworn statement in 2001. Applicant's involvement with illegal substances has been extensive, and it has spanned a period of 25 years, when he was between the ages of approximately 18 and 43. While in college, he purchased marijuana, spending between \$20 and \$40 three times per year between 1977 and 1982. He last purchased illegal drugs in 1989. On a less frequent basis, he used hallucinogenic mushrooms, cocaine, and acid. Much of his illegal drug involvement took place during times in his life when he had been entrusted with a government security clearance at both the Secret and Top Secret levels. He repeatedly lied to the government about his drug use. Although he testified he stopped using drugs in September 2001, there is no evidence to support his contention. Moreover, because he lied so much about his past drug use, I did not find him credible. Even, *arguendo*, that he stopped using illegal drugs in 2001, I do not think that lying in three documents to the government to process his security clearance, warrants

a clearance because he has been drug-free for five years. This is not a case of being rehabilitated from drug use. This case involves Applicant lying to the government about his past drug use. It was not until interviews with NSA in 2003 that he found courage to tell the truth about 25 years of illegal drug use. I commend his five years of being drug-free. However, his lying caused him to lose his access to SCI in October 2003 and that decision was affirmed on April 28, 2004. Thus, I cannot conclude that Applicant is willing to tell the truth, without prompting. Consequently, Criminal Conduct Disqualifying Conditions (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*) apply.

Various factors can mitigate the criminal conduct security concern. Applicant has failed to truthfully convey the extent of his drug use to the government while his applications were being processed for a security clearance. Applicant's use of illegal drugs spanned almost 25 years, and included the illegal use of marijuana, hallucinogenic mushrooms, cocaine, and acid. The record is devoid of Applicant being involved in any recent use of illegal drugs. However, not only has Applicant failed to disclose the extent of his illegal drug use and the period of time he used drugs, he provided contradictory information in his two SF 86s and his sworn statement. It was not until June 2003, that he provided a complete picture of his drugs use to an agent of another government agency. As a result of the information provided in his June 2003 interview, he was denied access to SCI. Moreover, that decision was sustained on appeal. Thus, Criminal Conduct Mitigating Conditions (CC MC) E2.A10.1.3.1 (*the criminal behavior was not recent*), CC MC E2.A10.1.3.2 (*the crime was an isolated incident*), CC MC E2.A10.1.3.3 (*the person was pressured or coerced into committing the act and those pressures are not longer present in that person's life*), CC MC E2.A10.1.3.4 (*the person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur*), and CC MC E2.A10.1.3.6 (*there is clear evidence of successful rehabilitation*) do not apply. Applicant has not mitigated the government's case. Accordingly, allegation 2.a of the SOR is concluded against 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. At age 49, he is highly educated and has been an entrepreneur in business, having run his own company for 15 years. Moreover, as a businessman, he was astute enough to sell his business to a company that is well-known in the federal contracting business. However savvy he might be in business, Applicant is naive about how his lying about his illegal use of drugs, which could negatively impact on his future career endeavors. The allegations under criminal conduct focus solely on the false statements he provided in two SF 86s and his signed, sworn statement. Much of his illegal drug involvement took place during times in his life when he had been entrusted with a government security clearance at both the Top Secret and Secret levels. This is not a case of being rehabilitated from drug use. This case involves Applicant lying to the government about his past drug-use. It was not until interviews with NSA that he found courage to tell the truth about 25 years of illegal drug use. Moreover, he lost access to SCI based on lying and discrepancies found in his many statements. Based on the evidence of record, however, it is not clearly consistent with the national interest to grant Applicant a security clearance. For the reasons stated, I conclude Applicant is not 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 E (Personal Conduct): AGAINST APPLICANT

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

Paragraph 2. Guideline J (Criminal Conduct): AGAINST APPLICANT

Subparagraph 2.a:	Against Applicant
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DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Jacqueline T. Williams
Administrative Judge