

KEYWORD: Drugs; Personal Conduct

DIGEST: Applicant is a 48-year-old employee of a defense contractor. He used marijuana a few times a year from 1977 to July 2005. He has held a security clearance since March 2001. He did not include his use of marijuana or use while holding a security clearance on his two security clearance applications. Clearance is denied.

CASENO: 06-08400.h1

DATE: 05/31/2007

DATE: May 31, 2007

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| In Re:                           | ) |                        |
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| SSN: -----                       | ) | ISCR Case No. 06-08400 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |
|                                  | ) |                        |

**DECISION OF ADMINISTRATIVE JUDGE  
THOMAS M. CREAN**

**APPEARANCES**

**FOR GOVERNMENT**

Braden M. Murphy, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 48-year-old employee of a defense contractor. He used marijuana a few times a year from 1977 to July 2005. He has held a security clearance since March 2001. He did not

include his use of marijuana or use while holding a security clearance on his two security clearance applications. Clearance is denied.

### **STATEMENT OF THE CASE**

On July 31, 2006, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). Applicant acknowledged receipt of the SOR on August 10, 2006. The SOR alleges security concerns under Guideline H (Drug Involvement), and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on August 28, 2006. He admitted two and denied two of the allegations under Guideline H, and denied the allegations under Guideline E, providing an explanation for his actions. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on February 22, 2007. Applicant received a complete file of relevant material (FORM) on March 14, 2007, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. His response was due April 13, 2007. As of April 30, 2007, he had not responded. The case was assigned to me on April 30, 2007.

### **FINDINGS OF FACT**

Applicant is a 48-year-old supervisory signal technician for a defense contractor. He has worked for the same employer for over 27 years. He is married with one step-daughter. Applicant submitted two security clearance applications at different times, an electronic version in 2000,<sup>1</sup> and a paper version in 2004.<sup>2</sup>

Applicant admitted he used marijuana until he completed high school in 1977. He told investigators he started using marijuana in 1977 or 1978. He admitted using marijuana only a few times since graduating from high school, averaging two or three times yearly. He stated he is not a habitual user. He used marijuana in social situations or at concerts, and his consumption did not have an effect on him. He only took a puff when offered so he could be part of the event or group.

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<sup>1</sup>Item 7 (Security Clearance Application, dated August 25, 2000).

<sup>2</sup>Item 4 (Security Clearance Application, dated August 25, 2004).

He did not use marijuana to satisfy a need for a drug or to get high.<sup>3</sup> He did not feel his use under the circumstances qualified as drug use, and his use does not show a consistent pattern.<sup>4</sup> Applicant

noted he had indiscretions in the past on vacation or holidays that did not affect his work performance or ability to deliver services to his customers.<sup>5</sup>

He told investigators that he purchased marijuana at least three times during his years of use. In response to the SOR, he stated a friend brought food and beverage for a gathering and also had marijuana to share. He gave the friend some money to cover the food and beverage expenses, and he told him to keep the change for the marijuana. He did not take possession of the marijuana and did not consider his actions as purchasing marijuana.<sup>6</sup>

Applicant admitted he used marijuana on June 18, 2005, and July 10, 2005. At the time, Applicant had a security clearance granted on March 3, 2001. Applicant responded “No” to question 27 on both security clearance applications, asking if in the last seven years he illegally used any controlled substance. He admitted using marijuana, a controlled substance, a few times a year from 1977 until July 2005. In 2000 and 2004, he had used marijuana in the last seven years. Applicant also answered “NO” to question 28 on the August 25, 2004, security clearance application asking if he ever used illegal drugs while possessing a security clearance. He has held a security clearance since 2001.

## POLICIES

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.”<sup>7</sup> Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.<sup>8</sup>

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

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<sup>3</sup>Item 3, Response to SOR, dated August 28, 2006, Item 6 (Investigation Testimonies, dated August 8, 2005, to August 12, 2005).

<sup>4</sup>Item 3 (Response to SOR, dated August 28, 2006) at 4.

<sup>5</sup>Item 5 (Interrogatories, dated July 7, 2006).

<sup>6</sup>Item 3 (Response to SOR, dated August 28, 2006) at 4.

<sup>7</sup>*Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>8</sup>Directive ¶ E2.2.1.

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. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.<sup>9</sup> An administrative judge should consider: (1) the nature, extent, 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 applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of recurrence.<sup>10</sup>

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.<sup>11</sup> 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.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.<sup>12</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.<sup>13</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."<sup>14</sup> The government is under no duty to present evidence to disprove any Adjudicative Guideline mitigating condition, and an Administrative Judge cannot assume or infer that any particular mitigating condition is applicable merely because the government does not present evidence to disprove that particular mitigating condition.<sup>15</sup> "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability."<sup>16</sup> "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."<sup>17</sup>

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<sup>9</sup>*Id.*

<sup>10</sup>Directive ¶¶ E2.2.1.1 through E2.2.1.9.

<sup>11</sup>*See* Exec. Or. 10865 § 7.

<sup>12</sup>Directive ¶ E3.1.14.

<sup>13</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

<sup>14</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>15</sup>ISCR Case No. 99-0597 (App. Bd. Dec 13, 2000).

<sup>16</sup>ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

<sup>17</sup>*Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

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: A security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information.

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

## CONCLUSIONS

I carefully considered all of the factors in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Applicant's use of marijuana from 1977 until 2005, and providing money to friends who purchased marijuana raises Drug Involvement Disqualifying Condition (DC) E2.A8.1.2.1 (*Any drug abuse*), and DC E.A8.1.2.2 (*Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*). Applicant admitted using marijuana in high school in 1977 or 1978. He admitted using marijuana twice yearly since then. He admitted using marijuana in June and July 2005. He also reimbursed friends who purchased the marijuana. Even though he may not have directly paid for or purchased the marijuana, his actions in reimbursing the friend for the purchase of the marijuana is the same as purchasing. The government has established the disqualifying conditions.

I have considered all of the Drug Involvement Mitigating Conditions (MC) and determine none apply. He admits to last using marijuana in July 2005. He used marijuana a few times a year since 1977. His use less than two years ago is recent, and his repeated use a few times a year shows his use was not aberrational behavior or an isolated event. MC E2.A8.1.3.1 (*The drug involvement was not recent*), and MC E2.A8.1.3.2 (*The drug abuse was an isolated or aberrational event*) do not apply. While Applicant states he will not use drugs in the future, he has presented no information to demonstrate any actions to show his statement is meaningful. A statement not to use in the future is not sufficient to establish a demonstrated intent. He has not presented information to mitigate the security concern for his use of drugs.

There is a security concern under Personal Conduct DC E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history, or similar form used to conduct investigations . . . determine security clearance eligibility or trustworthiness.*) Deliberate action in providing false information with the intent to deceive is the security concern. When Applicant completed the security clearance application, he did

not include his use of marijuana within the last seven years on either application. He stated he could not remember using marijuana for the seven years preceding his August 2000 application. He also did not note he used marijuana while holding a security clearance. He did not believe his occasional use constituted or warranted a positive response to the question. Also, since he did not use drugs with any consistency, and only on vacation or at social events, and his use of marijuana did not affect his job performance, he did not feel his use warranted a positive response on the application. He did not want his employer to misinterpret any positive answer. The two questions are direct and straight forward. They ask if he ever used drugs in the last seven years or while holding a security clearance. The questions do not ask if he used marijuana under circumstances that affect his job performance or the time and circumstances of his use of marijuana. It is clear he understood the question since he did not want his employer to misinterpret a positive response. His failure to correctly respond was deliberate with an intent to deceive the evaluators of his suitability for a security clearance. I considered all the mitigating conditions under personal conduct and determine none apply. I find against Applicant as to Personal Conduct.

I have considered Applicant's conduct under the "whole person" concept. I considered Applicant used an illegal drug over a period of time and while holding a security clearance. He then deliberately lied about the use to deceive investigators. He presented no information to mitigate or refute his use of marijuana. I find he is not eligible 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: | AGAINST APPLICANT |
| Subparagraph 1.a.:        | Against Applicant |
| Subparagraph 1.b.:        | Against Applicant |
| Subparagraph 1.c.:        | Against Applicant |
| Subparagraph 1.d.:        | Against Applicant |
| Paragraph 2, Guideline E: | AGAINST APPLICANT |
| Subparagraph 2.a.:        | Against Applicant |
| Subparagraph 2.b.:        | Against Applicant |
| Subparagraph 2.c.:        | Against Applicant |

### **DECISION**

\_\_\_\_\_ In light of all of the circumstances in 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

Thomas M. Crean  
Administrative Judge