

KEYWORD: Drugs; Alcohol

DIGEST: Applicant has used marijuana and psilocybin mushrooms for many years until as recently as 2005. Additionally, she has had a history of alcohol abuse that has continued as recently as March 2006, and she continues to regularly consume alcohol. No credible, independent evidence was offered to prove Applicant's rehabilitation. Mitigation has not been shown. Clearance is denied.

CASENO: 06-13216.h1

DATE: 06/15/2007

DATE: June 15, 2007

In Re:	)	
	)	
-----	)	ISCR Case No. 06-13216
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**DECISION OF ADMINISTRATIVE JUDGE  
MARTIN H. MOGUL**

**APPEARANCES**

**FOR GOVERNMENT**  
Emilio Jaksetic, Esq., Department Counsel

**FOR APPLICANT**  
*Pro Se*

**SYNOPSIS**

Applicant has used marijuana and psilocybin mushrooms for many years until as recently as 2005. Additionally, she has had a history of alcohol abuse that has continued as recently as March 2006, and she continues to regularly consume alcohol. No credible, independent evidence was offered to prove Applicant's rehabilitation. Mitigation has not been shown. Clearance is denied.

## STATEMENT OF THE CASE

On March 8, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) (Exhibit 1) to the Applicant, which detailed reasons 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 denied or revoked.

Applicant filed a notarized response, dated March 28, 2007, to the allegations set forth in the SOR, (Exhibit 3). She requested that his case be decided on the written record in lieu of a hearing.

On April 12, 2007, Department Counsel prepared the Department's written case. A complete copy of the File of Relevant Material (FORM) was provided to Applicant, and she was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed a response to the FORM which was received on May 16, 2007. The case was assigned to this Administrative Judge on May 24, 2007.

Department Counsel offered 10 documentary exhibits (Exhibits 1-10), and Applicant offered one documentary exhibit, a one page response to the FORM (Exhibit A). All exhibits have been admitted into evidence without objection.

## FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline H (Drug Involvement) and Guideline G (Alcohol Consumption) of the Directive. The SOR contains four allegations, 1.a., through 1.d., under Guideline H and one allegation, 2.a., under Guideline G. Applicant admitted all the SOR allegations, with a partial denial under 1.d. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the FORM, and the admitted documents, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 26 years old. She is employed as an interior designer by a defense contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector. She is not married and has no children (Exhibit 4).

### **Paragraph 1 (Guideline H - Drug Involvement)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because

she has abused illegal substances.

Applicant has admitted using marijuana approximately 100 times during the period from March 2000 through April 2005. She engaged in the illegal purchase of the marijuana that she used. Applicant also used psilocybin mushrooms from March 2000 through April 2005. Finally, she used the United States postal service to mail marijuana that she purchased outside of the U.S. (Exhibits 1, 3, A).

She claims that since May 2005, when she graduated college, she no longer uses illegal substances and she does not intend to use them in the future (Exhibits 3, A).

### **Paragraph 2 (Guideline G - Alcohol Consumption).**

The Government alleges in this paragraph that the Applicant is ineligible for clearance because she abuses alcohol to excess.

Applicant has admitted consuming alcohol to the point of impaired judgement from the age of 20 through March 2006 (Exhibits 3, 6).

She claims that she has now modified her drinking behavior, and although she now drinks two to three glasses of wine or cocktails per week, she does not drink to the point of impaired judgement and does not intend to abuse alcohol in the future (Exhibits 3, A).

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case.

As set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes

- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of alcohol abuse and criminal conduct that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

## CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegation set forth in the SOR:

In this case, the Government has met its initial burden of proving by substantial evidence that Applicant has used illegal drugs (Guideline H) and that she used alcohol to excess (Guideline G). Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against her.

Since this matter is being decided without a hearing, my evaluation is necessarily limited to the contents of the various documents that are found in the case file. Applicant has submitted documents, in which she avers that she will no longer use illegal drugs or consume alcohol to excess. However, when I consider the recency and frequency of her marijuana usage and her alcohol abuse, combined with the fact that no independent evidence was offered to prove Applicant's rehabilitation, I find that it is too soon to determine that Applicant's lifestyle and behavior have changed sufficiently to establish that she would not fall into the pattern of drug use and alcohol abuse in the future.

**(Guideline H - Drug Involvement)**

With respect to Guideline H, the Government has established its case. Applicant's improper and illegal drug abuse, including the use of marijuana, is of concern, especially in light of her desire to have access to the nation's secrets. Applicant's overall conduct pertaining to her illegal substance abuse clearly falls within Drug Involvement Disqualifying Condition DC25 (a), any drug abuse, and DC (c), illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.

Based on the recency and frequency of the marijuana usage and lack of independent evidence of rehabilitation, as discussed above, I cannot conclude that Applicant's conduct can apply to any of the Mitigating Conditions (MC) at this time.

In this case, the Government has met its initial burden of proving by substantial evidence that Applicant used illegal drugs for many years under Guideline H. Applicant, has not introduced sufficient, credible evidence in rebuttal, explanation or mitigation. Accordingly, Paragraph 1, Guideline H, is concluded against Applicant.

**(Guideline G -Alcohol Consumption)**

Applicant has consumed alcohol to the point of intoxication for a period of approximately six years , as recently as March 2006. While she has averred that she will not overuse alcohol in the future, she continues to imbibe alcoholic beverages on a regular basis, as described above.

The Government established that DC 22 (c) applies, Applicant has engaged in habitual or binge consumption of alcohol to the point of impaired judgment. Applicant has not demonstrated credible evidence to support a conclusion that she has reformed her habit and no longer consumes alcohol to excess. Therefore, I cannot conclude that any MC is applicable to Guideline G. Paragraph 2 is found against Applicant.

**FORMAL FINDINGS**

**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 G: AGAINST APPLICANT**

Subparagraph 2.a.: 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.

Martin H. Mogul  
Administrative Judge