

KEYWORD: Drugs; Alcohol; Personal Conduct

DIGEST: The Applicant's last Drug Involvement, marijuana, is not recent, having occurred more than 16 months ago. He has also "signed [a] statement of intent with automatic revocation of clearance for any violation." When interviewed by an investigator, he was candid as to his past Drug Involvement and Alcohol Consumption. However, his continued excessive consumption of alcohol is problematic. The Applicant last consumed the intoxicant, to the point that he was under its influence, in February of 2007, only three months ago. Mitigation is not shown as to his Alcohol Consumption. Clearance is denied.

CASENO: 06-17610.h1

DATE: 05/17/2007

DATE: May 17, 2007

In Re:)	
)	
)	
-----)	ISCR Case No. 06-17610
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
RICHARD A. CEFOLA**

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's last Drug Involvement, marijuana, is not recent, having occurred more than 16 months ago. He has also "signed [a] statement of intent with automatic revocation of clearance for any violation." When interviewed by an investigator, he was candid as to his past Drug Involvement and Alcohol Consumption. However, his continued excessive consumption of alcohol is problematic. The Applicant last consumed the intoxicant, to the point that he was under its influence, in February of 2007, only three months ago. Mitigation is not shown as to his Alcohol Consumption. Clearance is denied.

STATEMENT OF THE CASE

On November 27, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on or about December 18, 2006.

The case was originally assigned to another judge, but reassigned and received by the undersigned on March 27, 2007. Pursuant to a request from the Government, a continuance was granted, and an amended notice of hearing was issued on March 27, 2007. The case was heard on April 25, 2007. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on May 4, 2007. The issues raised here are whether the Applicant's past Drug Involvement, alleged Personal Conduct, and admitted Alcohol Consumption militate against the granting of a security clearance. [The Applicant admits the underlying factual basis of most of the allegations, except for Paragraph 3 of the SOR, as he denies any lack of candor during his interview by an investigator.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 29 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional Findings of Fact.

Guideline H - Drug Involvement & Guideline E - Personal Conduct

1.a. and 1.b. The Applicant used marijuana, with varying frequency, from about 1994, to his last usage on December 31st 2005 (TR at page 55 lines 3~17). During the last year of his usage, he used marijuana "[o]nce every three months or less" (TR at page 73 line 10 to page 74 line 2). He

also purchased marijuana on numerous occasions (*Id*). He no longer associates with those with whom he used drugs, and he has signed a statement of intent against any illegal Drug Involvement in the future (TR at page 81 line 18 to page 82 line 7, and Applicant's Exhibit (AppX) H, the last page, *see also* AppX B).

1.c. and 1.d. The Applicant used ecstasy, with varying frequency, from about 1994 to his last usage in March of 2000 (TR at page 55 line 18 to page 58 line 25). He used this hallucinogen about 7~11 times a year (TR at page 74 lines 6~21, and Government Exhibit (GX) 3 at pages 10~11). The Applicant also purchased ecstasy on numerous occasions (TR at page 55 line 18 to page 58 line 25).

1.e. The Applicant used cocaine, with varying frequency, from about 1996 to his last usage in 1998 (TR at page 59 lines 1~4). He used cocaine about once or twice a year (TR at page 74 lines 22~24, and GX 3 at pages 10~11).

1.f. and 1.g. The Applicant used inhalants once or twice in 1998, and another hallucinogen, psilocybin, in 1997 (TR at page 59 line 5 to page 61 line 5, at page 75 lines 1~4, and GX 3 at page 11).

3.b. When interviewed by an investigator in April of 2006, the Applicant mistakenly thought that he was only required to disclose his drug usage in the last seven years, as this was what he was required to disclose on his Questionnaire for Sensitive Positions (QSP) (TR at page 69 line 20 to page 76 line 11, at page 77 line 19 to page 78 line 15, and GX 1 at page 9). I find no wilful falsification here.

Guideline G - Alcohol Consumption & Guideline E - Personal Conduct

2.a. and 2.b. The Applicant consumed alcohol to excess and to the point of intoxication from about 1995 until about February of 2007 (TR at page 64 line 6 to page 65 line 1). In January of 2000, he was arrested and subsequently pled guilty to Dry Wreckless driving (TR at page 65 line 2 to page 66 line 14, and GX 2). The Applicant had consumed alcohol prior to this arrest (*Id*). When the Applicant drinks "six to seven plus" beers he feels under the influence of alcohol (TR at page 75 line 20 to page 77 line 7). He typically drinks on weekends during sporting events, and to the point of intoxication "3 to 6 times a year" (TR at page 64 line 12 to page 65 line 1, and GX 3 at page 2).

3.a. When interviewed by an investigator in April of 2006, the Applicant was unsure of what the term "intoxicated" meant; and as such, disclosed the date of his last alcohol related arrest (TR at page 66 line 15 to line 69 line 19, and at page 78 line 16 to page 80 at 6). I find no wilful falsification here.

Mitigation

Those who know the Applicant think most highly of him (AppX C).

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each 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 in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, 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.

The Government must make out a case under Guidelines H (Drug Involvement), G (Alcohol Consumption), and E (Personal Conduct); which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

A pattern of excessive Alcohol Consumption and illegal Drug Involvement raise questions regarding an individual's willingness or ability to protect classified information. Unacceptable Personal Conduct is conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places. If an applicant has demonstrated a lack of respect for the law, there then exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

CONCLUSIONS

Considering first the Applicant's past Drug Involvement, the Applicant used marijuana, and to a lesser extent other drugs, from about 1994 until his last usage in December of 2005. The first and third disqualifying conditions are therefore applicable. There was "drug abuse," and "purchase" of illegal drugs. However, I find the second mitigating condition is applicable here, as the Applicant has a "demonstrated intent not to abuse any drugs in the future." He has disassociated himself from drug-using associates, and has signed a statement of intent, acknowledging an automatic revocation of his clearance for any future violation. Guideline H is found for the Applicant.

Considering next his Alcohol Consumption, there was a conviction in 2000, and continued excessive consumption to at least February of 2007. I find the first and third disqualifying conditions applicable, as there is an "alcohol-related incident away from work," and "binge consumption of alcohol to the point of impaired judgement." He consumes 6~7 beers on some weekends while watching sporting events. I can find no countervailing mitigating condition. Guideline G is found against the Applicant.

Finally as to his alleged Personal Conduct, I find no lack of candor here. When interviewed, the Applicant disclosed the information that was required by the QSP. There was no intent to deceive the Government. Furthermore, he disclosed all of his past Drug Involvement and Alcohol Consumption six months later in response to written interrogatories (GX 3). Guideline E is found for the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his Alcohol Consumption. The Applicant has thus not met the mitigating conditions of Guideline E, and of Section E.2.2. of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guideline E.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.
- f. For the Applicant.
- g. For the Applicant.

Paragraph 2: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. Against the Applicant.

Paragraph 3: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of 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 the Applicant.

Richard A. Cefola
Administrative Judge