

KEYWORD: Drugs

DIGEST: Applicant is a 49-year-old certified marine specialist who has worked for a federal contractor for the last 20 years. He admitted that he used marijuana about five times from November 2003 to December 2003. He successfully completed a drug rehabilitation program and does not intend to use it in the future. He mitigated the security concerns raised by a history of drug involvement. Clearance is granted.

CASENO: 06-17849.h1

DATE: 03/28/2007

DATE: March 28, 2007

In re:)	
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SSN: -----)	ISCR Case No. 06-17849
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
SHARI DAM**

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

David P. Price, Esq.

SYNOPSIS

Applicant is a 49-year-old certified marine specialist who has worked for a federal contractor for the last 20 years. He admitted that he used marijuana about five times from November 2003 to December 2003. He successfully completed a drug rehabilitation program and does not intend to use it in the future. He mitigated the security concerns raised by a history of drug involvement. Clearance is granted.

STATEMENT OF THE CASE

On January 31, 2005, Applicant completed a security clearance application (SF-86). 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, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on November 16, 2006, detailing the basis for its decision—security concerns raised under Guideline H (Drug Involvement) of the Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR in writing on December 7, 2006, and requested a hearing before an administrative judge. The case was assigned to me on January 26, 2007. DOHA issued a Notice of Hearing on February 16, 2007, setting the case for March 1, 2007.

At the hearing, Department Counsel introduced Government Exhibits (GX) 1 and 2 into evidence without objections. Applicant testified in his case and called two other witnesses. He introduced Applicant Exhibits (AX) A through D into evidence without objections. DOHA received the hearing transcript (Tr.) on March 12, 2007.

FINDINGS OF FACT

Based on the entire record, including Applicant's admissions in his Answer to the SOR and at the hearing, I make the following additional findings of fact:

Applicant is a 49-year-old certified marine chemist who has worked for a federal contractor since December 1985 (GX 1 at 2). He has held a confidential security clearance since 1992 (*Id.* at 7). He is married and has two children, ages 24 and 17.

Applicant was an avid fisherman until he lost his fishing boat in 2001 (Tr.53). Sometime in the summer or fall of 2003, he met an individual at a cookout who also enjoyed fishing (Tr. 55). Several weeks after meeting, the individual invited Applicant to go on a fishing trip in November. Applicant consented. He subsequently went fishing with the individual and the individual's friends about 10-12 times (Tr. 55). On about five of those fishing trips, Applicant smoked marijuana with some of the men on the boat. About a week after smoking marijuana in the middle of December 2003, Applicant was called for a random drug test in accordance with his company's policy. The test was positive and the company reported the incident to the Defense Security Service (GX 2). He no longer associates with those friends (Tr. 70).

On December 29, 2003, Applicant entered an outpatient substance abuse treatment program (AX A-1). After finishing the outpatient portion of the program, he was discharged on February 19, 2004, with a diagnosis of cannabis dependence. In a February 23, 2004, assessment sheet, the licensed professional counselor noted that he successfully completed the program. He was “afforded the opportunity to attend Aftercare one time per week” with a certified substance abuse counselor (AX 3). The sheet noted, “This opportunity is only afforded to the patients who are motivated to make positive changes in their lives.” (*Id.*) In the Aftercare Discharge summary of April 22, 2004, the staff noted that he had completed aftercare treatment with a good prognosis and that his condition had improved (*Id.*). On February 27, 2007, he met with his previous counselor who noted those urine drug screens on “9/16/05, 1/8/07, 2/5/07 and 2/13/07 were negative.” (AX 5) She stated, “His prognosis is good should he continue to follow this recovery maintenance plan.” (*Id.*)

Applicant has not smoked marijuana since December 2003, more than three years ago, and does not intend to use it in the future (Tr. 62; 69). He knows he used poor judgment when he decided to smoke it on those fishing trips (Tr. 75). He believes he has learned from his mistakes. He needs to be more prudent in choosing friends and should evaluate his priorities carefully (Tr. 74-76). He is remorseful and realizes the seriousness of this situation, having had “three years to think about it.” (Tr. 69).

Applicant periodically attends Narcotics Anonymous meetings and discusses his issues with some of the people who attend the meetings (Tr. 66; 80). He also attends church regularly and sings in the choir.

The vice-president of Applicant’s employer testified. He is responsible for some of the company’s accounting matters and administers the random drug testing program. He holds a confidential security clearance. He has known Applicant for 22 years and observed him a couple times a week over the course of those years (Tr. 29-31). He was surprised by Applicant’s positive drug screen (Tr. 36). He believes Applicant is embarrassed by the situation, and thinks it was mistake that will not happen again (Tr. 33). He supports Applicant’s request for a security clearance (Tr. 33).

The president of the company, who has known Applicant for 28 years, also submitted a letter on behalf of Applicant. He is positive in his characterizations of Applicant and notes that Applicant has been in several positions of authority over the years (AX D-2).

Applicant’s wife learned of her husband’s marijuana use after he was notified of the positive drug screen (Tr. 48). She feels he is a very good father and husband (Tr. 42-43). She does not believe he will smoke marijuana again (Tr. 46).

POLICIES

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has “the authority . . . 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.” *Id.* at 527. 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.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Each security clearance decision “must be a fair and impartial common sense determination based upon consideration of all relevant and material information and the pertinent criteria and adjudication policy.” Directive ¶ 6.3. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

The revised Adjudicative Guidelines set forth potentially 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. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

CONCLUSIONS

Upon consideration of all facts in evidence and application of the appropriate adjudicative factors and legal standards, I conclude the following with respect to the allegations set forth in the SOR:

Guideline H: Drug Involvement

The security concern under Guideline H is that the use of an illegal drug or misuse of a prescription drug can raise questions about an individual’s reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations.

Based on Applicant’s admission that he has used marijuana five times from November 2003 to December 2003, while holding a security clearance, the Government established a disqualification under Drug Involvement Disqualifying Condition (DI DC) 25(a) *any drug abuse*,¹ and 25(g) *any illegal drug use after being granted a security clearance*.

After the Government raised a security concern, the burden shifted to Applicant to mitigate or rebut the allegations. Four conditions can mitigate security concerns arising from drug involvement. After reviewing all of them, I conclude as follows.

(1) Drug Involvement Mitigating Condition (DI MC) 26(a) *the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment is applicable*. Applicant has not smoked marijuana for more than three years. At the time he smoked it, he was fishing with individuals with whom he no longer associates. Since that time he has learned from his mistakes and strongly expressed his remorse over the incident, such that it is unlikely that he will repeat the misconduct. Given the change in his attitude, I do not believe his past conduct,

¹AG 24(a) *Drugs are defined as mood and behavior altering substances, and include: (1) Drugs, materials, and other chemical compounds . . . (marijuana or cannabis).*

which occurred about five times over two months, casts doubt on his current reliability or trustworthiness. In fact, I suspect he is more circumspect about making decisions and exercising his judgement.

(2) Applicant provided mitigation under DIMC 26(b) *a demonstrated intent not to abuse any drugs in the future*. He no longer associates with the people with whom he smoked marijuana, which is the evidence necessary to establish 26(b)(1) *disassociation from drug-using associated and contacts*. He has not used marijuana for three years, which is sufficient to trigger the application of 26(b)(3) *an appropriate period of abstinence*.

(3) DIMC 26(c) *abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended* is not applicable to the situation.

(4) DIMC 26(d) *satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional* is applicable. Applicant successfully completed an outpatient and aftercare treatment program, received a favorable prognosis from a qualified medical professional, and has not used marijuana since participating in the program.

Whole Person Analysis

In addition to evaluating the disqualifying and mitigating conditions under each guideline, the adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. The essence of scrutinizing all appropriate variables in a case is known as the “whole person” analysis. Directive ¶ E2.2. In evaluating the conduct of the applicant, an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual’s age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

I considered the totality of the evidence in view of the “whole person” concept, including Applicant’s middle age, his demeanor while testifying, his embarrassment about using marijuana, as well as the personal insights he gained about his behavior since the incident in 2003. I took into account the support of his employer and an otherwise good performance record over the last 20 years, which includes holding a security clearance. I carefully weighed the fact that he did not report his misconduct at the time, against his rehabilitative efforts and abstinence for the last three years. Given his present concern for his career and family, I believe he will continue to take the necessary steps to maintain abstinence and prevent a recurrence. Hence, he mitigated the allegations raised in the SOR. Accordingly, Guideline H is found in his favor.

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 as follows:

Paragraph1: Guideline H (Drug Involvement) FOR APPLICANT

Subparagraphs 1.a through 1.d:

For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

Shari Dam
Administrative Judge