

KEYWORD: Drugs; Personal Conduct

DIGEST: Applicant's positive drug screening test for amphetamines/methamphetamine in September 2005 and her admitted use of a prescription drug without a prescription in September 2005 raise security concerns under drug involvement and personal conduct. Although she denies using amphetamines/methamphetamine, she provided insufficient evidence to rebut the positive drug screening test. Applicant's eligibility for a assignment to a sensitive position is denied.

CASENO: 06-20237.h1

DATE: 09/17/2007

DATE: September 17, 2007

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In re:)
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SSN:	-----)
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Applicant for Public Trust Position)
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ADP Case No. 06-20237

**DECISION OF ADMINISTRATIVE JUDGE
ERIN C. HOGAN**

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's positive drug screening test for amphetamines/methamphetamine in September 2005 and her admitted use of a prescription drug without a prescription in September 2005 raise security concerns under drug involvement and personal conduct. Although she denies using amphetamines/methamphetamine, she provided insufficient evidence to rebut the positive drug screening test. Applicant's eligibility for a assignment to a sensitive position is denied.

STATEMENT OF CASE

On February 23, 2006, Applicant submitted an application for a position of public trust, an ADP I/II/III position. The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive");¹ and the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, effective September 1, 2006. On February 8, 2007, DOHA issued Applicant a Statement of Reasons (SOR) detailing the basis for its decision. The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline H, Drug Involvement, and Guideline E, Personal Conduct.

In a sworn statement dated March 9, 2007, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to another administrative judge on June 20, 2007. It was transferred to me on August 2, 2007. A notice of hearing was issued on August 6, 2007, scheduling the hearing for August 29, 2007. The hearing was conducted on that date. The government submitted Government Exhibits (Gov) 1- 4 which were admitted into the record without objection. Applicant testified on her own behalf, and submitted five exhibits which were admitted without objection as Applicant Exhibits (AE) A-E. I took administrative notice of a document submitted by the Government and marked it as Administrative Notice Document I (Admin Not I). DOHA received the hearing transcript (Tr.) on September 7, 2007.

FINDINGS OF FACT

In her SOR response, Applicant admits to SOR ¶¶ 1.a and 1.c, and denies SOR¶¶ 1.b, and 2.a. Applicant's admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 23 year old woman employed as a pharmacy technician for a Department of Defense contractor who is seeking a position of public trust. She has worked for her employer since July 2005. She is a high school graduate.² She attends college part-time studying pre-pharmacy. She is married.³

In December 2004, Applicant was hired as a pharmacy technician by another company. On September 2, 2005, she provided a urine sample during an employment drug screening. Her urine sample tested positive for amphetamines and methamphetamine.⁴ She lost her job as a result of the

¹ This action was taken under Executive Order 10865, dated February 20, 1960, as amended; and Memorandum from the Deputy Under Secretary of Defense Counterintelligence and Security, titled "Adjudication of Trustworthiness Cases," dated November 19, 2004.

² Tr. at 6; Gov Ex 1.

³ Tr. at 29-30.

⁴ Gov 3.

positive drug test. She denies using amphetamines or methamphetamine prior to her drug screening test.⁵ She experimented with marijuana and methamphetamine while in high school.⁶

Applicant admits to taking Clonazepam pills, on two occasions in late August 2005. Clonazepam is a Schedule IV controlled substance.⁷ The pills were prescribed to her mother. She was aware that she should not have taken pills that were prescribed to someone else. She believes taking the Clonazepam is what caused her positive drug screening test. She stated that Clonazepam is an anti-anxiety medication and she took the pills to help her sleep. She states that Clonazepam is a benzodiazepine which she describes as "sort of like a sedative for the central nervous system."⁸

The September 2005 drug screening results indicated that Applicant tested negative for benzodiazepine.⁹ She could not explain why she tested negative for benzodiazepine.¹⁰ She could not explain why she tested positive for amphetamines/methamphetamine.¹¹ She did not discover that her positive drug test was for amphetamines/methamphetamine until she was provided the test results in conjunction with this case. She would have disputed the positive test results immediately had she known that the results indicated that she tested positive for amphetamines/methamphetamine.¹²

On February 23, 2006, Applicant completed a Public Trust Position Application (SF 85-P).¹³ In response to question "21a. Illegal Drugs. In the last year, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbituates, methaqualone, tranquilizers, etc.), hallucinogenics, (LSD, PCP, etc.), or prescription drugs?" Applicant answered, "yes" and listed using Clonazepam twice in August 2005.¹⁴ She did not list amphetamine/methamphetamine use. She admits to taking Clonazepam without a prescription but denies taking amphetamines/methamphetamine.¹⁵

⁵ Tr. at 22.

⁶ Tr. at 21.

⁷ See Admin Not I.

⁸ Tr. at 21-25.

⁹ Gov 3.

¹⁰ Tr. at 24-25.

¹¹ Tr. at 31.

¹² Answer to SOR.

¹³ Gov Ex 1.

¹⁴ *Id.*

¹⁵ Tr. at 21-25.

Applicant's supervisor states that Applicant is a woman of great integrity who is extremely dedicated to her work. She describes her as "dependable, reliable, hard-working and honest." She has taken a lead role in the department over the past six months and has gained respect from her peers due to her knowledge and ability.¹⁶ A co-worker who has worked with Applicant for one year and eight months also finds her to be dependable, hard-working, and honest.¹⁷

On May 1, 2007, Applicant saw a doctor related to her sleeping problems. She was diagnosed with insomnia and prescribed medication to treat her condition. The medication was not Clonazepam.¹⁸

Applicant works full-time and takes nine hours of classes. She provided a urine sample for drug screening in November 2005 when she was hired by her current employer. She assumed the urine sample was negative because she has never been notified of the results. She testified that she has no intent to use illegal drugs and/or use prescription medications that are not prescribed to her in the future.¹⁹

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."²⁰ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information and determining trustworthiness within the executive branch. On December 29, 2005, the President approved Revised Adjudicative Guidelines which became effective on September 1, 2006.

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive and the Revised Adjudicative Guidelines. The Revised Adjudicative Guidelines sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline H - Drug Involvement - 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.²¹

¹⁶ AE A.

¹⁷ AE B.

¹⁸ AE C.

¹⁹ Tr. at 31.

²⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

²¹ Revised Adjudicative Guidelines, ¶ 24.

Guideline E - Personal Conduct - Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.²²

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

“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.”²³ An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.²⁴ An administrative judge should consider the following factors: (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 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 pertinent 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.²⁵

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.²⁶ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.²⁷ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”²⁸ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.²⁹ The same rules apply to trustworthiness determinations for access to sensitive positions.

CONCLUSIONS

²² Revised Adjudicative Guidelines, ¶ 15.

²³ Directive, ¶ E2.2.1.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Directive, ¶ E3.1.14.

²⁷ Directive, ¶ E3.1.15.

²⁸ ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).

²⁹ Directive, ¶ E2.2.2.

I have carefully considered all the facts in evidence and the legal standards.

Drug Involvement

Based on all the evidence, Drug Involvement Disqualifying Condition (DI DC) ¶ 25(a) (*any drug abuse*), and DI DC ¶ 25(b) (*testing positive for illegal drug use*) apply to Applicant's case. Applicant admits to taking Clonazepam, a schedule IV controlled substance, on two occasions in August 2005. She had no legal prescription for this drug. In September 2005, she tested positive for amphetamines/methamphetamine during a drug screening test conducted by her employer.

Applicant has the opportunity to mitigate the concerns. Two of the Drug Involvement Mitigating Conditions (DI MC) have the potential to apply. DI MC ¶26(a) (*the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*) is not applicable. Although Applicant's positive drug test and use of Clonazepam happened two years ago and there is no evidence of subsequent drug use, I cannot apply DI MC ¶ 26(a) because of Applicant's positive drug test for amphetamines/methamphetamine in September 2005. It was Applicant's burden to mitigate the concerns raised by the positive drug screening test. She has not met the burden. Concerns remain about her trustworthiness and good judgment.

DI MC ¶ 26(b) (*a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation*) is not applicable. Applicant testified that she has not used drugs since August 2005 and that she has no intention of using illegal drugs or drugs without a prescription in the future. However, a trustworthiness concern remains due to her failure to provide a sufficient explanation for testing positive for amphetamines/methamphetamine.

Applicant has not met her burden to mitigate the drug involvement trustworthiness concern. Guideline H is decided against Applicant.

Personal Conduct

Personal conduct under Guideline E is always a trustworthiness concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified and/or sensitive information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance or in other official matters is a trustworthiness concern. It is deliberate if it is done knowingly and willfully.

In this case, Applicant did not list using amphetamine/methamphetamine in response to question 21(a) on her questionnaire for public trust position. The September 2005 positive drug screening test result supports the assertion that she used amphetamines/methamphetamine. Personal Conduct Disqualifying Condition (PC DC) ¶ 16(a) (*deliberate omission, concealment, falsification of relevant 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) applies.

I find none of the personal conduct mitigating conditions (PC MC) apply to Applicant's case. PC MC ¶ 17(a) (*the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*) does not apply. While Applicant disclosed her Clonazepam use, she did not disclose her use of amphetamine/methamphetamine. She maintains that she did not use amphetamines/methamphetamine in September 2005. The positive drug test indicates otherwise. Applicant has not provided sufficient evidence to challenge the validity of the test.

PC MC ¶ 17(c) (*the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*) is not applicable. Although Applicant appears to be a bright young woman, I cannot conclude that the positive drug test result for amphetamine/methamphetamine is invalid. Her failure to admit and/or disclose her amphetamine/methamphetamine use on her trustworthiness questionnaire raises questions about her reliability, trustworthiness, and judgment.

PC MC ¶ 17(d) (*the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur*) is not applicable for the reasons mentioned above.

Applicant did not meet her burden to mitigate the trustworthiness concerns raised by her failure to disclose her amphetamine/methamphetamine use on her trustworthiness application. Guideline E is concluded against Applicant.

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthy determination process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence and the "whole person" in evaluating Applicant's trustworthiness. Applicant has a favorable work history with her current job. However, she failed to meet her burden to mitigate the concerns raised under drug involvement and personal conduct. A question remains about Applicant's reliability and trustworthiness due to her inability to explain the positive test result for amphetamines/methamphetamine in September 2005. Based on the evidence in the record, it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

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
Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

DECISION

In light of all of the evidence presented in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

Erin C. Hogan
Administrative Judge