

KEYWORD: Drugs; Personal Conduct

DIGEST: Applicant is a 29-year-old employee of a defense contractor who has a history of illegal drug use and a March 2005 arrest for possession of marijuana. He failed to mitigate the security concerns raised under the drug involvement and personal conduct guidelines. Applicant's eligibility for a security clearance is denied.

CASENO: 06-21966.h1

DATE: 06/30/2007

DATE: June 30, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-21966
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
NOREEN A. LYNCH**

APPEARANCES

FOR GOVERNMENT

John B. Glendon Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 29-year-old employee of a defense contractor who has a history of illegal drug use and a March 2005 arrest for possession of marijuana. He failed to mitigate the security concerns

raised under the drug involvement and personal conduct guidelines. Applicant's eligibility for a security clearance is denied.

STATEMENT OF THE CASE

On August 6, 2004, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86). On October 27, 2006, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) stating that it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.¹ The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline H (Drug Involvement) and Guideline E (Personal Conduct) of the revised 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.

On November 27, 2006, Applicant submitted a notarized response to the SOR, and elected to have a hearing before an administrative judge. The case was assigned to me on January 3, 2007. Originally the case was to be scheduled in March, but Applicant was out of the country and unavailable until his return to this country in June 2007.² I scheduled the hearing for June 12, 2007.

The hearing was convened as scheduled on June 12, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Three Government Exhibits (GE 1-3) were admitted without objection. Applicant's three exhibits (AE A-C) were also admitted into the record without objection. Applicant testified in his own behalf and presented the testimony of his older sister, as reflected in the hearing transcript received on June 21, 2007.

FINDINGS OF FACT

Applicant admitted to all allegations in the SOR under Guideline H and Guideline E.³ The admissions are incorporated as findings of fact. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 29-year-old employee of a defense contractor.⁴ After he dropped out of high school, he began working in the field of communications. He received training through a program sponsored by the military. He has worked for his current employer since 2004. Applicant is single with no children.⁵ He received an interim secret clearance after completing his August 6, 2004, security clearance (SF 86) application.⁶

¹This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

²A Notice of Hearing dated June 4, 2007 was mailed to Applicant. He waived the 15-day period for notice.

³Applicant's Answer to SOR, dated November 27, 2006.

⁴GE 1 (Application for Security Clearance (SF 86), dated August 6, 2004) at 1-7.

⁵*Id.* at 3.

⁶*Id.*

Applicant experimented with marijuana with various high school friends in 1993 or 1994. Beginning in 1997, he acknowledged that he purchased his own marijuana sometimes or just used what his friends had at the time. He also used crystal methamphetamine when he was 15 or 16 years old, and admitted that he became addicted to the illegal substance, but kicked the habit.⁷

In April 2003, Applicant used marijuana at a party. He shared a cigarette or two. At that same time, he began work with a company that had a policy of mandatory drug testing.⁸ In May 2003, after starting the position, he was required to take a drug screening test for his employment. He tested positive for marijuana. Shortly thereafter, he was fired from his position.⁹ He takes full responsibility for failing the drug test at work.

After he was fired from his position in 2003, Applicant vowed he would not smoke marijuana again because it cost him his job. He avoided people who had contact with drugs. He stated he learned from his mistakes and understood the risk was not worth it.¹⁰

Applicant completed a security clearance application in 2004. He held an interim security clearance and was aware that smoking marijuana or using any illegal substance could jeopardize his clearance. However, he used marijuana a few times after he completed that application.

On March 14, 2005, Applicant was arrested for possession of marijuana.¹¹ When he was in the airport ready to leave for Iraq someone at a bar gave him a marijuana cigarette as a going away present. He was trying to take it to Iraq. During the security screening, Applicant was pulled aside after a metal detector alarm. He acknowledges that he was not thinking. He spent a night in jail. The charges were dismissed. He was ordered to attend drug abuse counseling overseas that was offered through the military. He successfully completed the sessions.¹²

Applicant declares he will never use an illegal drug again in his life. He understands the ramifications for his future. He knows using drugs is illegal. He stated his experience with marijuana was not good. At the hearing, he acknowledged that using a drug illegally reflects on a person's willingness to comply with laws. He stated, "it is plain and simple—it is a lack of regard for rules and the law"¹³

⁷Tr. 30-32; The SOR did not allege use of crystal meth. This adverse information is not considered for disqualifying purposes, but is considered when analyzing the "whole person," and the potential application of mitigating conditions.

⁸Tr. 33.

⁹Tr. 34.

¹⁰Tr. 35.

¹¹GE 2 (Report of Federal Bureau of Investigation, dated January 4, 2006.)

¹²Tr. 44-45.

¹³Tr. 51.

Applicant enjoys his current position and is very committed to its success. He is a well respected employee and a valued member of the team.¹⁴ He maintains a professional appearance and sets a good example to the other staff. He displays a high degree of proficiency and professionalism in his work. He has excellent rapport with his customers and his work exceeds expectations.¹⁵ His most recent Performance Appraisal rates him as an exemplary employee.¹⁶

His three-year work record in Iraq providing support in telecommunications is rated highly. His immediate supervisor recommends him for any position and has great confidence in his ability to complete any task assigned to him. In 2007, he was selected as the Lead Supervisor for his division. He was responsible for day to day operations and was responsible for 28 employees at that location. He is embarrassed by his loss of employment due to failing a drug test. He takes full responsibility for the use of marijuana and understands that it was stupid to jeopardize his job. He claims that his family's welfare is more important to him now than smoking marijuana. He takes his work responsibilities seriously. While overseas the last two years he has avoided any situations where drugs may have been used. He states he will make a change in his lifestyle and apologizes for this mistake.¹⁷

Applicant owns a home. He sends money to his mother when he is working abroad to help her with her expenses. He has a strong work ethic and has steadily risen in the field of telecommunications without benefit of advanced degrees. He assists his sister financially with her adopted child.¹⁸

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.”¹⁹ 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.

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive. The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security decision must be a fair and impartial commonsense decision based on the

¹⁴AE A (Letter from Supervisor, dated February 28, 2006.)

¹⁵AE C (Letter from Manager, undated.)

¹⁶AE B (Performance Appraisal, dated January 2006 through January 2007).

¹⁷Tr. 53.

¹⁸Tr. 66-67.

¹⁹ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in ¶ 6.3 of the Directive, and AG ¶ 2(a).

“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.”²⁰ An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.²¹ 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.²²

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.²³ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.²⁴ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”²⁵ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.²⁶

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline H of the revised Adjudicative Guidelines (AG) most pertinent to the evaluation of the facts in this case.

Guideline H (Drug Involvement) The Concern: *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 judgement and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations.*²⁷

²⁰ Directive, ¶ E2.2.1.

²¹ Directive, Revised Adjudicative Guidelines (AG) 2 (a)(1)-(9).

²² *Id.*

²³ Directive, ¶ E3.1.14.

²⁴ Directive, ¶ E3.1.15.

²⁵ ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).

²⁶ Directive, ¶ E2.2.2.

²⁷ AG ¶ 24.

In this matter, the government provided substantial evidence that Applicant used marijuana for a period of more than eight years on a social basis until 2005. He was fired from employment in 2003 for failing a drug test. Consequently, Drug Involvement Disqualifying Condition (DI DC) AG ¶25(a) (*any drug use*), DI DC AG ¶25(b) (*testing positive for illegal drug use*) and DI DC AG ¶25(c) (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*) apply.

Applicant smoked marijuana after completing his 2004 security clearance application. He had an interim clearance. Thus DI DC AG ¶25(g) (*any illegal drug use after being granted a security clearance*) applies.

With the government's case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. I considered the Drug Involvement Consideration Mitigating Condition (DIMC) AG ¶26 (a) (*the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*). However, it does not apply because he was smoking marijuana in March 2005 after he completed his security application. Despite his loss of employment in 2003 for smoking marijuana, he continued to take risks with using an illegal drug. In 2005 Applicant was arrested for possession of marijuana.

Applicant provided insufficient evidence or explanation to support the DI MC AG ¶26 (b) (*a demonstrated intent not to abuse 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*). Applicant stated that he values his family and making a decent living is more important than smoking marijuana. Given his history of marijuana use for more than eight years, and his 2003 firing, and 2005 arrest while holding an interim clearance, I find an insufficient proof of a demonstrated intent.

Applicant apologizes for his mistakes, and states he has thought about his life and will not be influenced by peer pressure. However, Applicant has not mitigated the drug involvement security concern. Allegations 1.a through 1.e are decided against Applicant.

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.

Applicant lost a job because he tested positive for marijuana in 2003. He vowed he would not use marijuana again. After completing a security clearance application and understanding the importance of not using an illegal drug, he was arrested in March 2005 for possession of marijuana. Personal Conduct Disqualifying Condition (PC DC) AG ¶ 16 (e) (*personal conduct, or concealment about one's conduct that creates a vulnerability to exploitation, manipulation or duress, such as (1)*

engaging in activities which i, if known, may affect the person's personal, professional, or community standing) is raised due to Applicant's recent possession of marijuana.

Despite Applicant's exemplary work record and evidence of good character, he repeatedly engaged in risk taking behavior by using marijuana while holding an interim security clearance. He completed the required drug counseling sessions after his 2005 arrest and vows that he has learned his lesson in this regard. He stated that he has no intent to engage in this behavior again and would never be disloyal to his country. However, it is premature for the application of Person Conduct Mitigating Condition (PC MC) AG ¶17(d) (*the individual has acknowledged the behavior and obtained counseling to change the behavior or has 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*).

Applicant revealed the information about the illegal drug use to the Government and to his sister. Thus, PC MC AG ¶ 17(e) (*the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress*) partially applies.

Allegation 2.a is decided against Applicant.

Whole Person

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.

Applicant was candid and straightforward in his demeanor and testimony at the hearing. He acknowledges that he was not thinking in 2005 when he accepted the marijuana cigarette at the airport. He stated that it was one of the lowest things he has ever done. He is remorseful. He attended counseling while overseas. He also shouldered great responsibility in his job overseas. He was sincere in his testimony that he realizes there is a great inconsistency in his poor judgment as recent as 2005 and the great responsibility that he shouldered in his position overseas with the defense contractor. Applicant has not carried his burden in this case. There is not a sufficient period of abstinence.

I have considered all the evidence and the "whole person" in evaluating Applicant's security clearance determination. Applicant's recent lapse in judgment with drugs leaves doubt as to his reliability. I have considered his desire to put this behind him, but I conclude it is premature to find in favor of Applicant. Despite his good characteristics, he has not met the burden to overcome the concern. It is not clearly consistent with the interests of national security to grant a security clearance for Applicant. Clearance 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-1.e:	Against Applicant
Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.	Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant's request for a security clearance. Clearance is denied.

Noreen A. Lynch
Administrative Judge