

KEYWORD: Drugs; Personal Conduct

DIGEST: Security concerns are raised pertaining to Applicant's history of illegal marijuana use. In a signed, sworn, statement provided to the Defense Security Service in June 2002, she professed her intentions never to use marijuana or any other illegal drug in the future. She continued to occasionally use marijuana until January 2005. She used marijuana after being granted a security clearance on June 24, 2003. Her present expressed intentions to no longer use marijuana is given minimal credence based on her failure to follow through with her past intentions to discontinue illegal marijuana use. She has not met her burden to mitigate the concerns raised under drug involvement. Clearance is denied.

CASENO: 06-22515.h1

DATE: 07/30/2007

DATE: July 30, 2007

_____)
 In re:)
)
 -----)
 SSN: -----)
)
 Applicant for Security Clearance)
 _____)

ISCR Case No.06-22515

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

APPEARANCES

FOR GOVERNMENT

James F. Duffy, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

_____ Security concerns are raised pertaining to Applicant's history of illegal marijuana use. In a signed, sworn, statement provided to the Defense Security Service in June 2002, she professed her intentions never to use marijuana or any other illegal drug in the future. She continued to occasionally use marijuana until January 2005. She used marijuana after being granted a security clearance on June 24, 2003. Her present expressed intentions to no longer use marijuana is given minimal credence based on her failure to follow through with her past intentions to discontinue illegal marijuana use. She has not met her burden to mitigate the concerns raised under drug involvement. Clearance is denied.

STATEMENT OF CASE

On December 14, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were 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, alleges 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.

On January 4, 2007, Applicant responded to the SOR allegations. Applicant elected to have her case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on May 31, 2007. The FORM was mailed to Applicant on June 4, 2007, and received on June 7, 2007. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant timely responded on July 2, 2007. Department Counsel had no objection to Applicant's response. The case was assigned to me on July 16, 2007.

FINDINGS OF FACT

_____ Applicant is a 28-year-old software test engineer employed with a defense contractor. She submitted an Electronic Questionnaire for Investigation Processing (e-QIP) on September 28, 2005.²³ She admits all allegations in the SOR.⁴

Applicant has a history of illegal drug use. Between August 1997 and May 2001, she smoked marijuana on a monthly basis during her college years. She used marijuana at parties with friends.

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).

² Item 6.

³ Item 5.

⁴ Item 4.

She would give money to friends who purchased the marijuana.⁵ She first stopped using marijuana in May 2001 when she graduated from college.⁶

On May 5, 2002, she submitted a security clearance application. This was the first time she applied for a security clearance. In response to question 27, Your Use of Illegal Drugs and Drug Activity - Illegal Use of Drugs, she answered, "yes" and indicated that she had used marijuana approximately 25 times between August 30, 1997, and May 15, 2001.⁷ On June 14, 2002, she was interviewed by a Special Agent of the Defense Security Service in conjunction with her background investigation. She provided a signed, sworn statement. In the statement, she discussed her marijuana use and stated:

I stopped using marijuana in May 01 after graduation from college. I stopped because I matured, I was going out into the real world and I needed a real job. I have absolutely no intentions of using marijuana or any other illegal or illicit drug or substance in the future.⁸

Appellant was granted a security clearance in June 2003. On September 28, 2005, she submitted an electronic questionnaire for investigations processing (e-QIP) in order to upgrade her security clearance. In response to question 24(a), "Your Use of Illegal Drugs and Drug Activity, Since the age of 16 or the last 7 years, whichever is shorter, 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?" she answered "yes" and indicated that she used marijuana approximately 30 times between August 1997 and May 2004.⁹ She wrote in the additional comments section:

As I discussed with the agent who interviewed me for my Secret security clearance, the extent of my marijuana use in college was approximately 5-6 times a year, only when drinking/partying. I never personally purchased any, but I contributed to the purchase with a group of friends, one of whom would go and make the purchase. Since graduating from college, I have used marijuana sporadically as made available by acquaintances in graduate school during parties. I have not used marijuana since the beginning of 2005. This can be proven because of drug testing in my current place of employment.¹⁰

⁵ Item 7 at 1.

⁶ Item 7.

⁷ Item 5.

⁸ Item 7 at 2.

⁹ Item 6.

¹⁰ Item 6, question 24, additional comments.

In her answer to the SOR, Applicant indicates that she is willing to sign a statement of intent with automatic revocation of clearance for any violation. She is also willing to complete a prescribed drug treatment program. She no longer associates with anyone who uses illegal drugs. She states that she will never use marijuana again. She is willing to submit to voluntary urine tests. She states that at the time of her sworn statement in June 2002, she discontinued marijuana use and had no intention of using marijuana again. She made the mistake of using the marijuana again and fully admitted her mistake on her request for a security clearance upgrade.¹¹

In her response to the FORM, Applicant provided the results of two drug tests which she took on June 8, 2007, and June 27, 2007. Both tested negative. She states that she has maintained a high level of trust with her co-workers and employers in all three jobs where she has held a security clearance. She follows the rules for protecting classified information. She would never do anything to harm this country.¹²

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.”¹³ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive and the revised AGs, effective September 1, 2006. The revised AGs set 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.¹⁴

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.¹⁵

¹¹ Item 4.

¹² Response to FORM, dated July 2, 2007.

¹³ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

¹⁴ Revised AG, dated August 2006, ¶ 24.

¹⁵ Revised AG, dated August 2006, ¶ 15.

Conditions that could raise a security 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 an acceptable security risk.”¹⁶ An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.¹⁷ 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 extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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.¹⁸

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions under each guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the 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).

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.¹⁹ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts admitted by the applicant or proven by Department Counsel. The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision.²⁰ “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.”²¹

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

¹⁶ Revised AG, dated August 2006, ¶ 2.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Directive ¶ E3.1.14.

²⁰ Directive ¶ E3.1.15.

²¹ Directive ¶ E.2.2.2; Revised AG, dated August 2006, ¶ 2(b).

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.

Guideline H - Drug Involvement

Applicant's past drug abuse raises a security concern. Drug abuse is defined as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction."²² Between August 1997 and January 2005, Applicant used marijuana on a sporadic basis. The drug involvement security concern is heightened further by her decision to use marijuana after being granted a security clearance, after stating during her security background investigation in June 2002 that she had no intent to use marijuana in the future.

The following Drug Involvement Disqualifying Conditions (DI DC) apply to Applicant's case. DI DC ¶ 25(a) (*any drug abuse*) applies due to her past history of illegal marijuana use. DI DC ¶ 25(c) (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*) applies. Applicant possessed and purchased marijuana on several occasions during college and graduate school.

DI DC ¶ 25(g) (*any illegal drug use after being granted a security clearance*) applies. Applicant admits to using marijuana on several occasions while holding a security clearance. Having been interviewed in depth about her marijuana use during her initial background investigation, she should have been aware that any illegal drug use is a security concern. In fact, she expressly stated in a June 14, 2002 signed, sworn, statement that she had no intentions of using marijuana in the future but used marijuana on several occasions after being granted a security clearance.

DI DC ¶ 25(h) (*expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use*) applies. Despite Applicant's expressed intentions to never use illegal drugs after graduating from college, she used marijuana on several occasions up until January 2005. Her current intentions to never use marijuana again is less convincing based upon her return to illegal marijuana use in the past after making a similar claim. Her decision to use marijuana after expressing her intentions to refrain from marijuana use is a failure to clearly and convincingly commit to discontinue drug use.

The drug involvement concern can be mitigated. However, I find none of the mitigating conditions apply. In Applicant's case, 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*) does not apply. Applicant's drug use was recent. Her decision to use marijuana after telling the Defense Security Service that she has no intentions for future use raises questions about her reliability, trustworthiness and good judgement.

²² AG, ¶ 24(b).

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 said that she had no intent to use marijuana during her initial security background investigation. She was granted a security clearance. It is likely the security clearance was granted based on her statement of intent to refrain from illegal drugs in the future. She continued using marijuana despite these intentions and after being granted a security clearance. She has already been granted one opportunity to demonstrate an intent to refrain from marijuana use. She did not succeed. Her current expressed intentions to refrain from marijuana use carries less weight considering her failure to live up to her expressed intentions in the past.

Although Applicant indicated that she does not intend to use illegal drugs in the future, there is doubt that she will follow through on her intentions based on her failure to follow her past intentions to stop using marijuana. She has not presented sufficient evidence to mitigate the drug involvement security concern. I find against Applicant under Guideline H.

Guideline E, Personal Conduct

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. 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.

While Applicant's case raises the overall concern under Guideline E, no specific disqualifying condition applies to Applicant's case. The government states Personal Conduct Disqualifying Condition (PC DC) ¶ 16(c) (*credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information*) applies. This case is really a drug involvement case. The same conduct alleged under Guideline H is being cross alleged under Guideline E. An adverse determination was made under Guideline H. As a result, PC DC ¶ 16(c) does not apply based on the plain language of the disqualifying condition because the credible adverse information was sufficient for an adverse determination under another guideline - Guideline H.

There are no allegations of deliberate falsification in this case. As such, cross alleging the conduct alleged under the drug involvement guideline under the personal conduct guideline is redundant. I find for Applicant with respect to Guideline E.

I considered all the evidence provided and also considered the “whole person” concept in evaluating Applicant’s risk and vulnerability in protecting our national interests. While Applicant claims that she no longer intends to use marijuana, her continued use of marijuana after making a

similar statement in the past lessens the credibility of this statement. Applicant failed to mitigate the security concerns raised by the drug involvement concern. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

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
	Subparagraph 1.d.	Against Applicant
Paragraph 2	Guideline E:	FOR APPLICANT
	Subparagraph 2.a.	For 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. Clearance is denied.

Erin C. Hogan
Administrative Judge