

KEYWORD: Drug Involvement; Personal Conduct; Criminal Conduct

DIGEST: This 56 year old Applicant used cocaine and marijuana from 1968 to 1999, including the period from 1985 to 1999 when she held a security clearance. She has not used any illegal substance since 1999, and she stated that she will not use any illegal substance in the future. When Applicant completed a Security Clearance Application (SCA) in May 2004, she furnished to the Government information that was not completely accurate regarding her drug usage, but it was done inadvertently. Mitigation has been shown. Clearance is granted. \_\_\_\_\_

CASENO: 06-23207.h1

DATE: 9/14/2007

DATE: September 14, 2007

In re:	)	
	)	
	)	
-----	)	ISCR Case No. 06-23207
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
MARTIN H. MOGUL**

**APPEARANCES**

**FOR GOVERNMENT**  
Robert E. Coacher, Esq., Department Counsel

**FOR APPLICANT**  
**Pro Se**

## SYNOPSIS

This 56 year old Applicant used cocaine and marijuana from 1968 to 1999, including the period from 1985 to 1999 when she held a security clearance. She has not used any illegal substance since 1999, and she stated that she will not use any illegal substance in the future. When Applicant completed a Security Clearance Application (SCA) in May 2004, she furnished to the Government information that was not completely accurate regarding her drug usage, but it was done inadvertently. Mitigation has been shown. Clearance is granted.

## STATEMENT OF THE CASE

On February 22, 2007, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) (Item 1) to Applicant. The SOR detailed reasons under Guideline H (Drug Involvement), and Guideline E (Personal Conduct) 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 Applicant, and recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted or denied.

In a signed and sworn statement, dated March 13, 2007, Applicant responded to the SOR allegations (Item 3). She requested that her case be decided on the written record in lieu of a hearing. On March 22, 2007, Department Counsel prepared the Department's written case. A complete copy of the File of Relevant Material (FORM) was provided to Applicant, and she was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Response was due on May 2, 2007. Applicant did not submit a response to the FORM. The case was assigned to another Administrative Judge on June 14, 2007, but it was reassigned to this Administrative Judge on September 5, 2007.

In the FORM, Department Counsel offered six documentary exhibits (Items 1-6), which have been admitted without objection. Applicant offered no documentary evidence into the record.

## FINDINGS OF FACT

The Government opposes Applicant's request for a security clearance, based upon the allegations set forth in the SOR. The SOR contains four allegations, 1.a. through 1.d., under Guideline H (Drug Involvement), and two allegations, 2.a. and 2.b., under Guideline E (Personal Conduct). Applicant admitted SOR allegations 1.a. through 1.d., and she denied 2.a. and 2.b.. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR and the admitted documents, and upon due consideration of that evidence, I

make the additional findings of fact:

Applicant is 56 years old. She is employed by a defense contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector.

### **Paragraph 1 (Guideline H - Drug Involvement)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because it states that she has used illegal substances.

- 1.a. Applicant used cocaine at various times during the period from 1968 to 1999.
- 1.b. Applicant used marijuana at various times during the period from 1968 to 1999.
- 1.c. At times, Applicant contributed her own money for the purchase of illegal drugs.
- 1.d. Applicant used cocaine and marijuana during the period from the period from 1985 to 1999, when she held a security clearance.

Applicant stated in her RSOR that she last used any illegal substance in 1999, because of a “life changing experience.” In her response to interrogatories, signed by Applicant on December 27, 2006, (Item 6) she stated that she does not intend to use any illegal substance in the future.

### **Paragraph 2 (Guideline E - Personal Conduct)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because she exhibited conduct involving questionable judgement, untrustworthiness, unreliability and dishonesty.

2.a. Applicant executed a signed SCA on May 26, 2004. Question #27 asks, “Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, [etc.]?” Applicant answered “No” to this question. She clearly should have listed her use of cocaine and marijuana from 1968 until 1999, as alleged in paragraphs 1.a and 1.b., above. However, Applicant did list her cocaine and marijuana usage from 1968 until 1995 on question #28, the next question. Therefore, while Applicant did not list the correct year that she stopped using illegal substances, she did furnish a great deal of information about her illegal drug usage. Additionally on her RSOR, (Item 3) Applicant averred that when she completed her SCA, on May 26, 2004, she incorrectly believed that June 1995 was the last date that she had used any illegal substance.

2.b. Question #28 of the SCA asks, “Have you ever illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance or while in a position directly of immediately affecting public safety?” Applicant answered “Yes” to this question, and as stated above, she did list her cocaine and marijuana usage from 1968 until 1995. While she should have cited the dates from 1985, the date she first received her security clearance, until 1999, I find that Applicant made a good faith effort to provide the information requested by the Government and there was no wilful misrepresentation on either of these questions.

## POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of alcohol abuse and conduct that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the

loyalty of the applicant concerned."

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegation set forth in the SOR:

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

### **Paragraph 1 (Guideline H - Drug Involvement)**

With respect to Guideline H, the Government has established its case. Applicant's improper and illegal drug abuse, including the possession, and use of marijuana and cocaine is of concern, especially while she was holding a security clearance, in light of her desire to have access to the nation's secrets. Applicant's overall conduct pertaining to her illegal substance abuse clearly falls within Drug Involvement Disqualifying Condition (DC) 25 (a), any drug abuse, (c), illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution, and (g), any illegal drug use after being granted a security clearance.

Because Applicant stated that she last used marijuana or cocaine in 1999, and she does not intend to use it again, I conclude that Applicant's conduct does come within Mitigating Condition (MC) (a), the drug involvement happened so long ago that it is unlikely to recur, and (b), a demonstrated intent not to abuse drugs in the future because of (4) an appropriate period of abstinence.

In this case, the Government has met its initial burden of proving by substantial evidence that Applicant has used illegal drugs under Guideline H. However, Applicant has introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against her. Accordingly, Paragraph 1 Guideline H of the SOR is concluded for Applicant.

### **Paragraph 2 (Guideline E - Personal Conduct)**

With respect to Guideline E, the evidence establishes that Applicant provided incomplete and incorrect information to the Government in response to questions #27 and #28, on the SCA that she executed on May 26, 2004. However, Applicant did indicate that she had used cocaine and marijuana for a period of 1968 to 1995, rather than 1999. I conclude that when Applicant answered the SCA, she did not knowingly provide untruthful information to the Government.

While Applicant did exhibit extremely poor judgement by her use of illegal substances for many years, especially after she received a security clearance, there has now been a period of eight years where Applicant has refrained from using any illegal substances.

In reviewing the DCs under Guideline E, I conclude that no DC applies because Applicant did not deliberately provide false information in her SCA. I resolve Paragraph 2 Guideline E for Applicant.

### **Paragraph 3 (Guideline J - Criminal Conduct)**

I conclude that since the incomplete information that Applicant furnished to the Government on the SCA was inadvertent, no criminal conduct was committed, and no Criminal Conduct DC applies to this case.

On balance, it is concluded that Applicant has overcome the Government's information opposing her request for a security clearance.

### **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: FOR APPLICANT  
Subparagraph 1.a.: For Applicant  
Subparagraph 1.b.: For Applicant  
Subparagraph 1.c.: For Applicant  
Subparagraph 1.d.: For Applicant

Paragraph 2: For APPLICANT  
Subparagraph 2.a.: For Applicant  
Subparagraph 2.b.: For Applicant

Paragraph 3: For APPLICANT  
Subparagraph 3.a.: For Applicant

### **DECISION**

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

Martin H. Mogul  
Administrative Judge

