

KEYWORD: Drugs

DIGEST: Applicant smoked marijuana on five occasions between June 1991 and May 2000. During that time she was employed by a defense contractor and held a secret security clearance. She has failed to mitigate her drug involvement. Clearance is denied.

CASENO: 02-10454.h1

DATE: 07/16/2004

DATE: July 16, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-10454

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Francisco Mendez, Esquire, Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant smoked marijuana on five occasions between June 1991 and May 2000. During that time she was employed by a defense contractor and held a secret security clearance. She has failed to mitigate her drug involvement. Clearance is denied.

STATEMENT OF THE CASE

On July 29, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline H for drug involvement. Applicant submitted an answer to the SOR on October 16, 2003, requested a hearing, and admitted the sole SOR allegation

The case was assigned to me on April 26, 2004. A notice of hearing was issued on May 18, 2004, scheduling the hearing for June 7, 2004. The hearing was conducted as scheduled. The government submitted five documentary exhibits at the hearing that were marked as Government Exhibits (GE) 1-5, and admitted into the record without an objection. Applicant testified at the hearing and submitted three exhibits that were marked as Applicant's Exhibits (AE) 1-3, and admitted into the record without an objection. The transcript was received by the DOHA on June 18, 2004.

FINDINGS OF FACT

Applicant's admission to the allegation contained in the SOR is incorporated herein. In addition, after a thorough review of the pleadings, exhibits and testimony, I make the following findings of fact:

Applicant is a 37-year-old single woman who has never been married. She has a master of science degree in electrical engineering. She was employed by a defense contractor from July 1990 to September 2002, and was working as a senior engineer when she changed jobs. She is presently working as a senior systems engineer for a different defense contractor. Applicant was granted a secret security clearance in December 1990, and has maintained that clearance since.

Applicant first smoked marijuana in approximately June 1991. She was drinking beer with four other people in an apartment complex when one of them passed around a marijuana cigarette. She took a couple hits off the joint but denies experiencing any effect. The same conduct was repeated with the same group of people at a different apartment complex later that year. Once again, Applicant denies having experienced any effect from the marijuana.

Applicant next used marijuana in April 1996 with her boyfriend and two of his friends. Because she had been drinking alcohol on the prior occasions and felt no effect from the marijuana, she decided to smoke it while sober to see what effect it would have on her. She again claims to not have experienced any effect from the marijuana.

In March 2000, Applicant used marijuana with the same boyfriend while they were watching a movie at her house. She claims she used it on this occasion because she had never felt any effect from her prior uses, and her boyfriend told her the more times she used it the greater the effect would be. Again she claims to not have experienced any effect from the marijuana.

Applicant's last use of marijuana occurred in May 2000 after she attended a party. She took a couple of hits off a joint while with the same boyfriend, and then went out to dinner and from there home.

Applicant attributes her uses of marijuana to peer pressure and curiosity. She denies ever purchasing or possessing marijuana, except of course on those occasions when she was actually using the substance. She no longer associates with the people she was with when she used marijuana in 1991, and has not seen the boyfriend since some time in approximately 2001.

Applicant sought medical treatment for "relationship difficulties" in June 1995, and denied having used marijuana during an apparent intake interview. (GE 4)

She received psychological counseling between July 1998 and November 2000 to deal with her intake symptoms of "sad mood, sleep disturbance, hopelessness, worthlessness, guilty feelings, (and) low self esteem." (GE 5) As part of her initial assessment for entry into the counseling program, Applicant revealed she had made a suicidal gesture in 1985 while a college student, had received counseling from the college counseling staff, and was at the time of the assessment taking a drug prescribed by a sleep disorder specialist. During the counseling sessions themselves, Applicant revealed numerous relationship issues, problems and conflicts, many associated with her boyfriend. ⁽²⁾

Applicant is presently under the care of a psychiatrist to deal with anxiety issues. She has been prescribed medication to control those issues. According to Applicant's psychiatrist, she does not meet the diagnostic criteria for substance abuse or substance dependence. (AE 1) The psychiatrist also notes that Applicant's consumption of 1-3 drinks every 1-2 weeks does not meet the criteria for alcohol dependence and/or abuse.

Applicant's supervisors have found her to be a talented, enthusiastic and dedicated employee. They believe her to be an honest and trustworthy individual who could not be blackmailed. Applicant adamantly asserts she will never again abuse any controlled substance and that she cannot be blackmailed.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline H, for drug involvement, with its DC and MC, is most relevant in this case.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽³⁾ The government has the burden of proving controverted facts.⁽⁴⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence⁽⁵⁾, although the government is required to present substantial evidence to meet its burden of proof.⁽⁶⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁷⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁸⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

No one has a right to a security clearance⁽¹⁰⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹¹⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹²⁾

CONCLUSIONS

Under Guideline H, illegal drug involvement raises questions about an individual's willingness or ability to protect classified information. Involvement with or use of an illegal drug indicates unwillingness or inability to abide by the law. Cleared employees must respect regulations whether they agree with them or not. If they do not respect the rules on illegal substances, they may not respect the rules designed to protect classified information.

Applicant used marijuana on five occasions between June 1991 and March 2000. When she used the marijuana, she worked for a defense contractor and possessed a security clearance. She attributes her marijuana use to peer pressure and curiosity, and reports that on the two occasions she used marijuana in 2000 she was with her boyfriend.

During March 2000, Applicant both used marijuana with her boyfriend, and saw her counselor to discuss her relationship conflicts. She reported to the counselor that she was doing well and was continuing to monitor her contacts with males. (GE 5) Applicant agreed to terminate her counseling sessions in April 2000, and then used marijuana with her boyfriend in May 2000. Applicant next decided to "touch base" with her counselor in November 2000 and reported she was doing pretty well and had not dated in a year, despite having smoked marijuana with an individual she identifies as her boyfriend on two occasions in the preceding eight months.

Despite having engaged in psychological counseling for more than two years to deal with personal relationships, Applicant continued to succumb to either her own curiosity or the peer pressure exerted by her boyfriend and experimented with marijuana while possessing a security clearance. She is now under the care of a psychiatrist who has prescribed medication to deal with her anxiety issues and who has posited that she is neither a substance abuser nor substance dependent. However, there is no evidence to suggest that the issues that led her to succumb to peer pressure before, and caused her to abuse marijuana and the trust that was placed in her as a security clearance holder, no longer exist.

Under the circumstances present in this case, I cannot find sufficient attenuation from Applicant's past misconduct to warrant a finding that her conduct was not recent. Accordingly, Disqualifying Conditions (DC) 1: *Any drug abuse*; and 5: *. . . . Recent drug involvement, especially following the granting of a security clearance, . . . , will almost invariably result in an unfavorable determination* apply in this case. I have considered all mitigating conditions under Guideline H and find none apply.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has failed to mitigate this security concern. Guideline H is decided against Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline H: Against the 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.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Applicant's mental health issues are being discussed and considered only for the effect they have on the applicability of disqualifying and mitigating conditions under Guideline H.
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
5. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
6. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
7. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
8. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
9. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
10. *Egan*, 484 U.S. at 528, 531.
11. *Id* at 531.
12. *Egan*, Executive Order 10865, and the Directive.

