

KEYWORD: Drugs; Personal Conduct

DIGEST: Applicant used marijuana from September 1996/October 1996 to at least June 1999, taking twenty to fifty "hits" of marijuana from fall 1997. He also used psilocybin twice, and enjoyed its effects. Applicant falsely denied any illegal drug involvement on his security clearance application executed in September 1999. Clearance is denied.

CASENO: 01-00186.h1

DATE: 09/17/2001

DATE: September 17, 2001

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 01-00186

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

William S. Fields, Esq., Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated April 24, 2001, to the Applicant which detailed reasons 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 the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on: 1) illegal drug involvement (guideline H) and 2) personal conduct (guideline E) related to deliberate falsification of a September 1999 security clearance application.

On May 17, 2001, Applicant responded to the allegations set forth in the SOR and requested that his case be determined on the written record in lieu of a hearing. The Government submitted its File of Relevant Material on June 5, 2001, a copy of which was forwarded to Applicant by letter dated June 8, 2001, with instructions to submit additional information and/or any objections within thirty days of receipt. Applicant elected not to respond, and the case was assigned to me on July 26, 2001, for a decision.

FINDINGS OF FACT

After a thorough review of the evidence, and on due consideration of the same, I render the following findings of fact:

Applicant is a 24-year-old data base analyst with a history of illicit substance abuse (primarily marijuana). He has been employed by a defense contractor since August 1999, and seeks a security clearance for his defense-related duties.

Applicant first smoked marijuana as a sophomore in college, when he was offered a joint at a party in about September/October 1996. He enjoyed the relaxing effects of the drug, so he started using it on a routine basis. From fall 1997 to June 1999, Applicant took twenty to fifty "hits" of marijuana per month.

Applicant spent an average of \$80 per month for marijuana when he was in college. He bought the drug directly from friends and acquaintances at small gatherings of friends. On occasion, Applicant contributed toward the purchase of marijuana for his personal use at parties.

Applicant also tried psilocybin (hallucinogenic mushrooms) twice during his sophomore year in college. The first time, he tried the substance out of curiosity when among a small group of friends. Applicant experienced no hallucinations, but he enjoyed the "goofy" feeling the drug gave him. He purchased the psilocybin he used on the second occasion, spending \$20 to \$25.

After earning his Bachelor of Arts degree in geography, Applicant in August 1999 went to work as a data base analyst for a defense contractor. A week after commencing his employ, Applicant was requested to complete a security clearance application (SF 86). Applicant responded negatively thereon to questions 27 ["Since the age of 16 or in 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 (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?"]⁽¹⁾ and 29 ["In the last 7 years, have you been involved in the illegal purchase, manufacture, trafficking, production, transfer, shipping, receiving, or sale of any narcotic, depressant, stimulant, hallucinogen, or cannabis for your own intended profit or that of another?"] as he was fearful he would lose his job if he admitted he had used and purchased illegal drugs.

Three and a half months later, in December 1999, Applicant was interviewed by a special agent of the Defense Security Service (DSS) about his alcohol and drug use, foreign travel and connections, and interaction with law enforcement agencies. Applicant detailed his use of marijuana from September/October 1996 to June 1999 and to purchasing marijuana for his personal consumption as well as for friends. He related that he had tried psilocybin twice out of curiosity during his sophomore year in college. Acknowledging the illegality of his drug involvement, Applicant explained his rationale for using marijuana and psilocybin, as follows:

My general philosophy was that the marijuana and mushrooms are natural, part of the earth, and that if God made it, and it doesn't kill you, it must be good.

Applicant denied any intent to use any illegal drugs in the future, as it would be detrimental to his career. In response to why he had not listed any of his drug use on his security clearance application, Applicant told the agent he had misread the application as he had been in a hurry.

On April 24, 2001, DOHA issued a SOR to the Applicant, alleging security concerns due to his illegal drug involvement and deliberate falsification of his security clearance application. On May 17, 2001, Applicant admitted the allegations of the SOR (excepting the reference to Zocor use), and explained that he had been scared he would be fired if he reported his illegal drug use on his SF 86:

I admit that I did not state I had used marijuana and mushrooms and that was stupid. I filled out the Security Clearance Application 1 week after I had started the first job of my career. I didn't know what I was doing and was scared that if I had mentioned drugs I would be fired. Unfortunately I did not realize the seriousness of the application. After learning more about the Clearance Application from a Defense Investigative Services agent and realizing it's seriousness, I wanted to be honest and not hide anything, therefore I told him about my past drug experimentation. In no way did I want to lie or deceive the Department of Defense. I'm sorry.

Describing himself as a "clearheaded, career oriented professional," Applicant reiterated he had no intent to use any illegal drugs in the future, and expressed a willingness to undergo drug testing.

Circa May 2001, Applicant purchased a house for his residence and as a future investment.

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. *See* Directive 5220.6, Enclosure 2, Section E2.2.4.

Considering the evidence as a whole, I find the following adjudicative guidelines to be most pertinent to this case:

GUIDELINE H

Drug Involvement

E2.A8.1.1. The Concern:

E2.A8.1.1.1. Improper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

E2.A8.1.1.2. Drugs are defined as mood and behavior-altering substances, and include:

E2.A.8.1.1.2.1. Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants and hallucinogens); and

E2.A8.1.1.2.2. Inhalants and other similar substances.

E2.A8.1.1.3. Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

E2.A8.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A8.1.2.1. Any drug abuse (see above definition);

E2.A8.1.2.2. Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.

E3.A8.1.3. Conditions that could mitigate security concerns include:

E2.A8.1.3.1. The drug involvement was not recent.

GUIDELINE E

Personal Conduct

E2.A5.1.1. The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

E2.A5.1.2. Conditions that could raise a security concern and may be disqualifying also include:

E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material 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.

E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination.

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

* * *

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following with respect to guidelines H and E:

After his initial experimentation with marijuana in September/October 1996, Applicant began to use it on a routine basis. From fall 1997 to his graduation from college in June 1999, Applicant took twenty to fifty "hits" of marijuana per month. He also ingested psilocybin (hallucinogenic mushrooms) twice during his sophomore year. Such illegal drug use is incompatible with holding a security clearance because of the obvious potential for impairment when one is under the influence as well as the demonstrated disregard for the laws proscribing such involvement. Disqualifying condition (DC) E2.A8.1.2.2., any drug abuse, under guideline H is pertinent to an evaluation of Applicant's security worthiness. Moreover, since Applicant purchased marijuana and psilocybin, DC E2.A8.1.2.2., illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution, must be considered as well.

The Directive provides for mitigation of illegal drug involvement if the drug use was not recent (MC E2.A8.1.3.1.); it was isolated or aberrational (MC E2.A8.1.3.2.); there is demonstrated intent not to abuse any drugs in the future (MC E2.A8.1.3.3.); or satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional (MC E2.A8.1.3.4.). There is no evidence of any marijuana use by Applicant since June 1999. Strictly in terms of the passage of time, his drug involvement is not recent. However, a determination as to the risk of relapse must take into account not only the date of last use, but also the extent and duration of involvement. Applicant's use of marijuana on the order of twenty to fifty hits per month was extensive. Applicant described it as "routine." While his use of psilocybin was limited to twice, it cannot be viewed separately from his regular marijuana ingestion. By his own admission, Applicant enjoyed the effects of both drugs. Notwithstanding the significant role marijuana especially has played in his recreational activities, Applicant submits he has no intent to use any illegal drug in the future. For MC E2.A8.1.3.3. to apply, it is not enough that one state an intent to forego any future drug involvement; the intent must be demonstrated by concrete actions taken in reform. The more serious or long-term the drug abuse, the stronger the evidence of rehabilitation must be to overcome the negative security implications of that conduct. All of the marijuana involvement which is of record took place when Applicant was a college student. However, it is not clear that his marijuana involvement was confined to the campus or to the academic semesters. While Applicant indicates he has matured and now realizes marijuana use is incompatible with his career goals, there is a paucity of evidence as to his current social activities and/or friendships. For example, it is not established whether Applicant has terminated his association with those persons with whom he used marijuana in the past. Based on the limited information of record, I am unable to conclude there is no risk of recurrence of drug use. Accordingly, subparagraphs 1.a., 1.b., and 1.c. are resolved against him.

Applicant chose not to reveal his illegal drug use and purchase on his SF 86 which he executed in early September 1999, shortly after commencing his defense-related employ. Deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities raises personal conduct (guideline E) concerns. (See DC E2.A5.1.2.2.).

Under the Directive's adjudicative guidelines pertinent to personal conduct, the knowing and willful misrepresentation of material facts is potentially mitigated provided the information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness or reliability (MC E2.A5.1.3.1.); the falsification was isolated, not recent, and the individual has subsequently presented correct information voluntarily (MC E2.A5.1.3.2.); the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts (MC E2.A5.1.3.3.); or the omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided (MC E2.A5.1.3.4.). None of these mitigating conditions apply in this case. Marijuana abuse occurring to as recently as June 1999 and as regularly as

twenty to fifty "hits" per month raises significant questions about an individual's judgment, reliability and trustworthiness. In addition to the demonstrated disregard for the laws proscribing involvement with controlled dangerous substances, there is an unacceptable risk of disclosure of classified information when one is under the influence.

Applicant submits in mitigation he was candid in his December 1999 DSS interview about his illicit substance involvement. While he detailed his ingestion of marijuana and psilocybin as a college student, and admitted to purchasing both illicit substances, it is not clear he volunteered the information up-front before being confronted. Furthermore, the ameliorative impact of his disclosures of drug use are undermined by his lack of candor during that interview regarding the reason the drug information was omitted from his SF 86. As reflected in a statement, which Applicant swore was "correct and true as written," he told the DSS agent he "was in a hurry and misread" his security clearance application. This deliberate false statement to the DSS agent is conduct contemplated within DC E2.A5.1.2.3. of the personal conduct guideline, and it precludes a finding that the SF 86 false statements were isolated in nature.

To Applicant's credit, he admitted in response to the SOR that he intentionally omitted his illegal drug involvement from his SF 86 because he feared loss of his employment. Yet, although he expressed sorrow for any inconvenience he may have caused because he did not report his drug use on his application, he also maintained in his Answer that on learning of the importance of the security clearance application from the agent, he "wanted to be honest and not hide anything." As noted, Applicant elected to provide a false reason to the agent for the SF 86 omission of drug use rather than admit he had deliberately lied on his SF 86. His recent claim of complete candor during the DSS interview raises serious doubts about his reform. Concerns persist as to whether his representations can be relied on. Adverse findings are therefore warranted with respect to subparagraphs 2.a. and 2.b. of the SOR.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline H: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: 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.

Elizabeth M. Matchinski

Administrative Judge

1. The Government alleged in subparagraph 2.a. that Applicant responded "Yes" to question 27, and listed use of 1 tablet of Zocor 5 mg daily from 06/01/1998 to 10/01/1998. In the only SF 86 of record (Item 4), Applicant answered question 27 in the negative. There is no evidentiary basis to indicate Applicant ever used Zocor. Applicant indicated in his response to the SOR that he did not recall ever having taken Zocor or mentioning that drug on his application.