

DATE: November 20, 2003

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In Re:  
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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-18204

**DECISION OF ADMINISTRATIVE JUDGE**

**ROGER E. WILLMETH**

**APPEARANCES**

**FOR GOVERNMENT**

Robert J. Tuidor, Department Counsel

**FOR APPLICANT**

Joseph A. Corsmeier, Esq.

**SYNOPSIS**

Applicant claims that in 1998, he falsely confessed drug involvement to an investigator for a federal security agency. Based on the record, however, his admission was true and it is his denials of drug involvement on his current security clearance application and, more recently, to a Defense Security Service special agent that are false. Applicant has not mitigated nor does the record provide mitigation of that misconduct. Clearance is denied.

**STATEMENT OF THE CASE**

On August 20, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order [\(1\)](#) and Department of Defense Directive, [\(2\)](#) issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline H (Drug Involvement) and Guideline E (Personal Conduct). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant him access to classified information and recommends that his case be submitted to an Administrative Judge.

On September 16, 2002, DOHA received a response to the SOR from Applicant, in which he requested a hearing. The case was assigned to me on March 17, 2003. A notice of hearing was issued on March 27, 2003, and the hearing was held on April 30, 2003. During the hearing, three Government exhibits, one Applicant exhibit, and the testimony of Applicant were received. The transcript (Tr) was received on May 8, 2003.

**FINDINGS OF FACT**

Having thoroughly considered the evidence in the record, including Applicant's admission to SOR ¶ 2.c, I make the following findings of fact:

Applicant is a 28-year-old computer programmer employed by a defense contractor. He is seeking a security clearance.

Applicant used marijuana twice between 1989 and 1990, once between 1992 and 1993, once in 1994, once in 1995, and

once in 1997.<sup>(3)</sup>

In 1997, Applicant applied for a position with a federal security agency. He initially denied ever having used illegal drugs. Following polygraph exams on December 16, 1997 and again on February 13, 1998, Applicant admitted to the agency's investigator his use of marijuana, as previously found. Applicant further stated that he was afraid he would not get the job if he reported his drug involvement.<sup>(4)</sup>

Applicant received a Bachelor of Science Degree in Computer Engineering on June 12, 1999.<sup>(5)</sup>

On February 9, 2000, Applicant executed a security clearance application (SF 86). In response to question 27,<sup>(6)</sup> he answered, "no," deliberately omitting his use of marijuana, as previously found.

On July 8, 2002, Applicant provided a sworn statement to a special agent for the Defense Security Service (DSS). In this statement, Applicant admitted he had provided a false statement to a federal security agency in 1998, when he admitted having used marijuana. He continued to falsely maintain that he had never used drugs.<sup>(7)</sup>

### **POLICIES**

The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion to demonstrate that it is clearly consistent with the national interest to grant or continue a security clearance. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include 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. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

#### **Guideline H: Drug Involvement**

The concern under Guideline H is that 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.

Conditions that could raise a security concern and may be disqualifying under Guideline H include E2.A8.1.2.1, any drug abuse (Disqualifying Condition 1). 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.A8.1.1.3).

None of the conditions that could mitigate security concerns under E2.A8.1.3 appear applicable in this case, since Applicant now denies any drug involvement and has not submitted mitigation of the drug involvement to which he previously admitted.

#### **Guideline E: Personal Conduct**

The concern under Guideline E is 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.

Conditions that could raise a security concern and may be disqualifying under Guideline E include E2.A5.1.2.2 (Disqualifying Condition 2). Disqualifying Condition 2 addresses 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.

Another condition that could raise a security concern and may be disqualifying is E2.A5.1.2.3 (Disqualifying Condition 3). Disqualifying Condition 3 addresses 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.

Conditions that could mitigate security concerns include E2.A5.1.3.2, the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily (Mitigating Condition 2). Another condition that could mitigate security concerns is E2.A5.1.3.3, the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts (Mitigating Condition 3).

## CONCLUSIONS

### Guideline H: Drug Involvement

Applicant's admitted use of marijuana on six occasions over a eight year period establishes Disqualifying Condition 1.

Although Applicant admitted his drug abuse to a federal agency in 1998, he now asserts that he made a false admission. He contends that at that time he initially denied any drug involvement but his response was questioned, following a polygraph examination on December 16, 1997. This scenario was repeated when Applicant again underwent another polygraph on February 13, 1998. He testified:

After being asked so many times the same question in the polygraph I got so angry and feel that I wanted to get out of there. So I agree to what he was asking me (sic).<sup>(8)</sup>

By his own admission, Applicant has lied. The question is whether he lied in 1998, as he now contends, or whether he has lied on his latest SF 86 and to the DSS special agent investigating his current security application. Consequently, Applicant's assertions in this case must be subject to close scrutiny.

Applicant's explanation for his behavior is not reasonable. The circumstances of his interview in 1998 do not appear to have been sufficiently intimidating so as to cause a 22-year-old male, who was within little more than a year from obtaining a college degree, from falsely confessing to drug involvement. Moreover, a false confession does not appear consistent with Applicant's assertion that he did so after becoming angry. Were he innocent of any drug involvement, it would seem that his anger would have caused him to resist making any false confession.

In addition to admitting the drug involvement to the investigator in 1998, Applicant further admitted that he initially failed to report it for fear he would not get the job. This is more likely an explanation of why he initially denied any drug involvement than a fabricated excuse for a false admission.

Since Applicant now denies any drug involvement, he has not offered nor does the record contain any evidence to establish mitigation for the drug involvement that he previously admitted. The evidence of record does not support his contention that he falsely admitted to drug involvement. Therefore, I find against Applicant with respect to SOR ¶ 1a.

### Guideline E: Personal Conduct

Applicant admits that he lied to the investigator for a federal security agency when he admitted drug involvement. He

thereby admits to conduct that establishes Disqualifying Condition 3 under Guideline E. As previously discussed, however, I have concluded that Applicant actually admitted the truth when he acknowledged his drug involvement, even though he did so after his initial denial was challenged. Therefore, I find in favor of Applicant with respect to SOR ¶ 2.c.

As previously discussed, the record demonstrates that Applicant engaged in the drug abuse to which he admitted in 1998. He deliberately omitted this drug involvement from his SF 86 and falsely stated to the DSS special agent that his earlier admission to the same was false. This establishes both Disqualifying Condition 2 and Disqualifying Condition 3.

Applicant asserts the applicability of the mitigating condition described in E2.A5.1.3.2 (Mitigating Condition 2) to his previous admission of drug involvement, which he now claims was false. However, Mitigating Condition 2 would not be applicable to his earlier statement, even if it were false. Mitigating Condition 2 requires more than that a falsification be an isolated incident and not recent. The individual also must subsequently provide correct information voluntarily. Even though Applicant testified that he immediately regretted his admissions at the 1998 interview, he never voluntarily came forward to acknowledge his action, even when he completed his latest SF 86 nearly four years later. Applicant never claimed his 1998 admission was false until the DSS special agent confronted him with its inconsistency with his latest SF 86.

Applicant has failed to demonstrate that his admission of drug involvement was false, rather than his subsequent denials. Since he maintains his denial of drug involvement on his latest SF 86 and to the DSS special agent, Applicant has not offered nor does the record contain any evidence to establish mitigation for those deliberate falsifications. Therefore, I find against Applicant as to SOR ¶ 2.a and SOR ¶ 2.b.

### **FORMAL FINDINGS**

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline H: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: For Applicant

### **DECISION**

In light of all the evidence in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

*Signed*

**Roger E. Willmeth**

**Administrative Judge**

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.
3. Govt Ex 2.

4. *Id.*

5. Ap Ex A.

6. "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?"

7. Govt Ex 3.

8. Tr 39.