

KEYWORD: Drugs; Personal Conduct

DIGEST: Applicant, a 34-year-old employee of a government contractor, used marijuana repeatedly from October 1990 until December 1994 and then yearly until September 2000. Applicant also used LSD and psychoactive mushrooms. He failed to disclose his drug use on his SF 86 prepared in July 2000 because he feared the loss of his employment. Clearance is denied.

CASENO: 02-07025.h1

DATE: 07/16/2004

DATE: July 16, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-07025

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 34-year-old employee of a government contractor, used marijuana repeatedly from October 1990 until December 1994 and then yearly until September 2000. Applicant also used LSD and psychoactive mushrooms. He failed to disclose his drug use on his SF 86 prepared in July 2000 because he feared the loss of his employment. Clearance is denied.

STATEMENT OF CASE

On May 12, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, 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) to 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 Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated July 31, 2003, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on December 29, 2003. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not do so. The case was assigned to, and received by, me on March 11, 2003.

FINDINGS OF FACT

Applicant admitted to all of the specific allegations in the SOR and stated no qualifications or mitigating facts. The admitted facts are hereby incorporated as findings of fact. After a complete and thorough review of the information in the record, and upon due consideration of same, I make the following additional findings of fact.

Applicant, a 34-year-old employee of a government contractor, used marijuana repeatedly from October 1990 until December 1994 and then yearly until September 2000. Applicant also used LSD and psychoactive mushrooms. He failed to disclose his drug use on his SF 86 prepared in July 2000.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, 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." *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

The Government has alleged a number of Disqualifying Conditions (DC) concerning drug involvement including drug abuse (E2.A8.1.2.1.) and illegal possession ((E2.A8.1.2.2.) under Guideline H. Also alleged is falsification of his SF 86 by failing to disclose drug use (E2.A5.1.2.2) under Guideline E.

Drug involvement is relevant to the proposed denial of a security clearance for the Applicant since it is always a security concern because it raises questions about a person's willingness or ability to protect classified information. Any drug abuse is a condition that may be disqualifying. E2.A8.1.1.3 provides the following definition: "Drug abuse is the illegal use of a drug"

Mitigating Condition (MC) 2 might apply if there is "[a] demonstrated intent not to abuse any drugs in the future." Although Applicant has stated he does not now use marijuana, he has stated that he would likely continue to use marijuana in the future after he retired. Such intention raises serious questions concerning his judgment and trustworthiness to hold a security clearance. Although his admitted use of drugs is now not recent under MC 1, the total effect of his admissions do not justify mitigation of the allegation.

With regard to Guideline E Applicant has shown an unwillingness to comply with legal requirements for disclosure of past conduct on the SF 86. Applicant used marijuana after the completion of his SF 86 when the existence of questions about drug use on the form should have alerted him to the concerns of the government about drug use. He failed to acknowledge the use of drugs on the SF 86 because he feared the loss of his job if it was reported. No Mitigating Conditions were advanced by Applicant and none are applicable.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is not clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline H: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

DECISION

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge

