

KEYWORD: Drugs, Personal Conduct, Criminal Conduct

DIGEST: Applicant's past drug use, personal conduct, and criminal conduct raise security concerns as he knowingly and willfully omitted adverse information from his security forms in 1996 and 1997 about his illegal drug use that continued from 1994 until at least October 2003 even though he understood marijuana use was against the government's security policies. He knowingly used illegal drugs after being granted a security clearance and has no stated intent to stop using marijuana. Clearance is denied.

CASENO: 02-08613.h1

DATE: 09/28/2004

DATE: September 28, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-08613

**DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esquire, Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant's past drug use, personal conduct, and criminal conduct raise security concerns as he knowingly and willfully omitted adverse information from his security forms in 1996 and 1997 about his illegal drug use that continued from 1994 until at least October 2003 even though he understood marijuana use was against the government's security policies. He knowingly used illegal drugs after being granted a security clearance and has no stated intent to stop using marijuana. Clearance is denied.

### STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on September 15, 2003. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) The SOR alleges specific concerns over drug use (Guideline H), personal conduct (Guideline E), and criminal conduct (Guideline J). Applicant received the SOR on October 1, 2003, and responded to these SOR allegations in an Answer notarized on October 13, 2003, where he admitted all of the allegations and requested a decision without a hearing.

The case was assigned to Department Counsel who on December 4, 2003, prepared a File of Relevant Material (FORM) and advised Applicant that he had 30 days from receipt of the letter to respond. Applicant received the FORM on December 10, 2003, but failed to provide any response within the thirty day deadline. On February 20, 2004, the case was assigned to me.

### FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, 48 years old, has worked for defense contractor #1 since 1995. From 1992 to 1995 he was self-employed. From 1982 to 1992 he worked for defense contractor #2. (Exhibits 4, 7, 8) Applicant initially completed a security form (SF 86) in May 1996 (Exhibit 7) and again in January 1997 (Exhibit 8). Applicant was granted a Defense Department Top Secret security clearance in April 1997. (Exhibit 4)

Applicant attended a university from 1986 to present but received no degree. (Exhibits 4, 8)

### **Drug Use, Personal Conduct, Criminal Conduct,**

In January 1997 Applicant was given a Personnel Security Policy Advisory that improper use of drugs by National Security Agency (NSA) affiliates was strictly prohibited; in fact, he signed a "Drug Statement" that advised him that "unlawful use of any narcotic substance, marijuana, or dangerous drugs, is a basis for ineligibility for Special Security Access." He was further advised that "any future unlawful use of any narcotic substance, marijuana, or dangerous drugs may result in removal of Special Security Access." (Exhibit 8)

In a November 1997 letter Applicant appealed an October 1997 NSA decision to deny him a security clearance wherein he admitted falsifying security forms; he admitted previous drug use as a young man, and in 1994 when he tried marijuana again. He stated his intent to continue his marijuana use on weekends. (Exhibit 6) In September 1998 NSA (2) advised Appellant's company that he was denied NSA SCI access in October 1997 and that he had completed the appeal rights afforded him. (Exhibit 9)

Applicant was interviewed by a Defense Security Service (DSS) agent in February 2002. He stated that he had falsified his security questionnaire in May 1996 because he "did not think it would be possible to get a security clearance" if he told the truth about his use of marijuana. From 1971 to 1976 he used hashish about 100 times; he used LSD 100 times, and marijuana on a daily basis two or three times a day. After having stopped his illegal drug use in 1976 and after 18 year where he had remained drug free, he began in 1994 to use marijuana again after some friends teased him. He continued to use marijuana even when he lost his security clearance in 1997. His friends usually gave him the marijuana. Since 2000 he has been using marijuana twice weekly and admitted his use continued to February 2002 when he was interviewed by DSS. He admitted that one effect of his past drug use was short term memory loss. Applicant never sought counseling because of his marijuana use. While he stated he "could quit," his intent was to continue using marijuana unless his circumstances changed. (Exhibit 5)

Applicant completed another SF 86 in June 2003 where he admitted cannabis use from June 1996 to present and admitted use while he had a security clearance. (Exhibit 4) He admitted to his continuing drug use in October 2003, but stated he had never gone to work under the influence of drugs. (Answer)

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole, I weighed relevant Adjudication Guidelines as set forth below :

### **Guideline H - Drug Involvement**

**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.**

Drugs are defined as mood and behavior altering:

[First] 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

[Second] Inhalants and other similar substances.

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

**Conditions that could raise a security concern and may be disqualifying include:**

1. Any drug abuse<sup>(3)</sup> (see above definition);

**Conditions that could mitigate security concerns include:**

1. The drug involvement was not recent;

**Guideline E - Personal Conduct**

**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.**

**The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:**

[First] Refusal to undergo or cooperate with required security processing, including medical and psychological testing; or

[Second] Refusal to complete required security forms, releases, or provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personnel security or trustworthiness determination.

**Conditions that could raise a security concern and may be disqualifying also include:**

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;

**Conditions that could mitigate security concerns include:**

None

## **Guideline J - Criminal Conduct**

**A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.**

**Conditions that could raise a security concern and may be disqualifying include:**

- a. Allegations or admissions of criminal conduct
- b. A single serious crime or multiple lesser offenses.

**Conditions that could mitigate security concerns include:**

None

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. The Applicant then needs to present evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

## **CONCLUSIONS**

### **Drug Use**

The Government established security concerns over Applicant's intermittent marijuana use from 1971 to 1976 and again from 1994 to at least October 2003. He continued to use marijuana continuously even after he had applied for a security clearance. His marijuana use continued even after he was advised such drug use was inconsistent with being granted access to classified information and after he was denied access by NSA. Further, he continued to use marijuana even after he had been granted a top secret clearance in April 1997. Subsequently, Applicant has made no commitment to stop his marijuana use and to avoid future drug use. He has continued to use marijuana despite these government policies and laws against drug use.

Given the passage of time since his early drug use, Applicant mitigated this past drug from 1971 to 1976. On the other hand, Applicant began to use drugs again in 1996 knowing that it was against the government's policies and continues with no expressed intent to quit. This conduct raises ample questions about his judgment overall. Pursuant to 10 U.S.C. Section 986(c)(2) and the Deputy Secretary of Defense implementing memorandum of June 2001, continuous use of an unlawful controlled substance requires a denial of a security clearance. Thus, after considering the Adjudicative Process factors and the Adjudicative Guidelines, while I rule for Applicant on subparagraphs 1.a., 1.b., and 1.c., I rule against Applicant on subparagraphs 1.d, 1.e., 1.f., 1.g. and 1.h. incorporated under SOR Paragraph 1.

### **Personal Conduct**

The Government clearly established security concerns over Applicant's personal conduct. Applicant had a duty to disclose his past drug use on security forms in 1996 and in 1997, and he failed to disclose this adverse information. Applicant's behavior reflects questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations and could indicate that he may not properly safeguard classified information. Thus, he has shown poor judgment in his personal conduct by his knowing and willful failure to disclose required information on his drug use on two government forms as he had a duty to disclose fully all his drug use.

To rebut and overcome the Government's case, Applicant would have to demonstrate that he has mitigated<sup>(4)</sup> this conduct. He provided no evidence of mitigation, such as a good work record. Nor did he provide any favorable reference letters. To his credit he later disclosed his drug use to a DSS agent in 2002 and in his June 2003 SF 86. However, this later disclosure cannot erase security concerns over his earlier omissions where he failed to give truthful answers to questions that were both relevant and material to his security eligibility. Security concerns persist over his conduct in the security clearance process which also led NSA to deny him access in 1998. Hence, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraphs 2.a. through 2.c. under SOR Paragraph 2

### **Criminal Conduct**

The Government established security concerns over Applicant's criminal conduct under Title 18 United States Code Section 1001<sup>(5)</sup>

as he falsified answers to questions on two federal security form by failing to disclose the details of the recency and frequency of his marijuana use. Although he was never prosecuted under this statute or convicted, his conduct, as discussed above under personal conduct, falls within that statute as his false answers to the drug question were given

"knowingly and willfully." While he disclosed his drug use in 2002 and again in 2003, he also had a duty to fully disclose his drug use on the earlier government forms. His knowing failure to make these required disclosures raises continuing concerns about his security worthiness under Title 18 United States Code Section 1001. Thus, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraph 3.a. incorporated under SOR Paragraph 3.

### **FORMAL FINDINGS**

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

#### Paragraph 1. Guideline H: AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

#### Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant



Subparagraph 2.c.: Against Applicant

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph 3.a.: Against 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 the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. The SOR at subparagraph 2.c. alleges that the denial of access "was upheld by the Defense Security Service on September 2, 1998, despite a written appeal made. . .on November 18, 1997." According to Exhibit 9 the final decision

to deny access was made by NSA Central Security Agency. The evidence submitted does not establish the grounds for this adverse decision, but does include a copy of Applicant's November 1997 appeal letter.

3. Pursuant to 10 U.S.C. Section 986(c)(2) and the Deputy Secretary of Defense implementing memorandum of June 2001, continuous use of an unlawful controlled substance requires a denial of a security clearance.

**4. Conditions that could mitigate security concerns include:** 1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability; 2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily; 3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts; 4. 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; 5. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress; 6. A refusal to cooperate was based on advice from legal counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information; 7. Association with persons involved in criminal activities has ceased.

**5. Title 18 United States Code Section 1001.** - Statements or entries generally (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both.