

KEYWORD: Drugs; Personal Conduct

DIGEST: Applicant wilfully misrepresented his marijuana use on clearance applications in October 1995, June and December 1999, and April 2002, and during a subject interview in December 1999, rendering him an unsuitable candidate for access to classified information. He also used marijuana while holding a clearance. Clearance denied.

CASENO: 02-27899.h1

DATE: 03/18/2005

DATE: March 18, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-27899

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN GRATTAN METZ, JR**

**APPEARANCES**

**FOR GOVERNMENT**

Jason R. Perry, Esquire, Department Counsel

Francisco J. Mendez, Esquire, Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant wilfully misrepresented his marijuana use on clearance applications in October 1995, June and December 1999, and April 2002, and during a subject interview in December 1999, rendering him an unsuitable candidate for access to classified information. He also used marijuana while holding a clearance. Clearance denied.

### **STATEMENT OF THE CASE**

Applicant challenges the 21 November 2003 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of drug involvement and personal conduct. [\(1\)](#) He answered the SOR 22 December 2003, and requested a hearing. DOHA assigned the case to me 15 July 2004 and I heard it 27 August 2004. DOHA received the transcript 2 September 2004.

### **FINDINGS OF FACT**

Applicant admitted the allegations of the SOR; accordingly I incorporate his admissions as findings of fact. He is a 30-year-old installer employed by a defense contractor since November 2000. He previously had a clearance while in the U.S. Navy from 1996 to 2000.

By his admissions, Applicant concedes that he misrepresented his drug abuse history on clearance applications in October 1995, <sup>(2)</sup> June and December 1999, <sup>(3)</sup> and April 2002, <sup>(4)</sup> and during a December 1999 subject interview with the Defense Security Service. <sup>(5)</sup> He admits using marijuana with varying frequency from March 1993 to December 1991, at times when he held a clearance. These admissions are consistent with his June 2002 sworn statement (G.E. 5) <sup>(6)</sup> and his answer to the SOR <sup>(7)</sup>. Unfortunately, his admissions are also inconsistent with his answer <sup>(8)</sup> and his testimony at hearing. <sup>(9)</sup> At hearing, he acknowledged the credibility issues raised by his inconsistent statements (Tr. 56) and conceded that he would not believe his own statements of lower levels of drug use under the circumstances (Tr. 64). The record otherwise lacks evidence of Applicant's work history or character references.

## **POLICIES**

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are guidelines Guideline H (Drug Involvement) and E (Personal Conduct).

## **BURDEN OF PROOF**

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government. <sup>(10)</sup>

## **CONCLUSIONS**

The government established a Guideline H case and Applicant did not mitigate the conduct. Although his last marijuana use was in December 2001, his drug use while cleared raises particular concerns about his suitability for a clearance. <sup>(11)</sup> While he now vows to remain drug free that vow is less credible given Applicant's conflicting statements about the extent of his drug use and thus insufficient to demonstrate intent to refrain from drug abuse in the future. Accordingly, I resolve Guideline H against Applicant.

The government also established a Guideline E case and Applicant did not mitigate the conduct. He deliberately misrepresented his drug history on four clearance applications over seven years and during a subject interview. <sup>(12)</sup> His explanations are not credible, and indeed conflicting, and I conclude he intended to conceal this information from both the government and his employer.

Applicant's conduct demonstrates a lack of candor required of cleared personnel. The government has an interest in examining all relevant and material adverse information about an Applicant before making a clearance decision. The government relies on applicants to truthfully disclose that adverse information. Further, an applicant's willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the government relies on in order to perform damage assessments and limit the compromise of classified information. Applicant's conduct suggests he is willing to put his personal needs ahead of legitimate government interests. I resolve Guideline E against Applicant.

## **FORMAL FINDINGS**

Paragraph 1. Guideline H: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph 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.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).

2. By failing to disclose his marijuana use as early as 1993.
3. By failing to disclose his additional marijuana use while in a cleared status after entering the U.S. Navy in 1996.
4. By answering "no" to questions 27 (illegal drug use at anytime) and 28 (illegal drug use while cleared).
5. By asserting that he had not used any marijuana since 1993.
6. "Now I have had a couple of experiences with marijuana use, but do not have the intentions (sic) of using it anymore. I have never purchased or sold marijuana. I used it like once in a blue moon like maybe at a party . . . The last use of marijuana was about seven or eight months ago, and (sic) do not have the intentions on using it again."
7. "I do not use marijuana like it is a cigarette I do not smoke all day everyday. The times I used marijuana I took a puff, and that was it. . ."
8. "I did not intentionally put no to lie on my SF-86, I put no because I was used to putting no while I was in the Navy, but I used marijuana a couple of times before my military career, and one time after my military career . . . I have never flunked on a urinalysis test provided by my current co[mpany] ASC, DARPA, and the US Navy."
9. Where he acknowledged using marijuana three times in March 1993 and at a party in 1994 (Tr. 29-30) and in approximately December 2001 when he had a clearance in a civilian job (Tr. 26), but insisted he had not used marijuana while in the Navy (Tr. 36).
10. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
11. E2.A8.1.2.5.... Recent drug involvement, especially following the granting of a security clearance, . . will almost invariably result in an unfavorable determination.
12. 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, . . . [or] determine security clearance eligibility or trustworthiness. . . ;