

KEYWORD: Drugs

DIGEST: Applicant used cocaine two or three times a month for a period of two years ending in December 2001, following his arrest for possession of a controlled substance. He used cocaine after he had been granted a secret security clearance. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from Applicant using cocaine after having been granted a clearance. Clearance is denied.

CASENO: 02-29097.h1

DATE: 03/04/2005

DATE: March 4, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-29097

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

James B. Norman, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant used cocaine two or three times a month for a period of two years ending in December 2001, following his arrest for possession of a controlled substance. He used cocaine after he had been granted a secret security clearance. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from Applicant using cocaine after having been granted a clearance. Clearance is denied.

STATEMENT OF THE CASE

On February 19, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On March 3, 2004, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. On June 28, 2004, the Applicant received a complete copy of the file of relevant material (FORM) dated June 15, 2004, and was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. On received August 2, 2004, Applicant responded to the FORM. On November 10, 2004, I was assigned the case.

FINDINGS OF FACT

The SOR alleges Drug Involvement. The Applicant admits to the following: using cocaine from the late 1998 or early 1999 until December 2001; he purchased cocaine on numerous occasions; he was arrested in December 2001 and charged with possession of a controlled substance; he received treatment from January 2002 to June 2002 for cocaine dependence; and used cocaine after having been granted a security clearance in July 1998. Those admissions are incorporated herein as findings of fact. After thorough review of the whole record, I make the following additional findings of fact:

The Applicant is 45 years old and has worked for a defense contractor since March 1993.

In late 1998 or early 1999, Applicant first used cocaine. A few months later he began to purchase and use cocaine approximately two or three times a month. He spent \$50 per purchase. He continued at this rate until December 2001. By December 2001, the police received numerous calls of apparent drug transactions involving Applicant taking place in a drug store parking lot. On December 11, 2001, the police arrested Applicant after he visited the lot. He had three bags of cocaine, which he had purchased for \$50. (Item 6) He last used cocaine prior his arrest. Prior to stopping, he had "developed a mild dependence on the drug but I was never addicted to its use." (Item 5) His intent is to never use cocaine or any illegal substance in the future.

As a result of his arrest, the court withheld adjudication of guilt and Applicant received six months probation. Applicant received treatment from January to December 2002. At the time of his arrest, Applicant held a secret clearance, which had been issued in July 1998. The year following his arrest Applicant took random drug tests. The test results are not part of the record.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the Government must establish, by substantial 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. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "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 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline H, Drug Involvement. Under Guideline H, the security eligibility of an applicant is placed into question when that applicant is involved with illegal drugs. The improper or illegal involvement with drugs raises questions regarding an applicant'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. Directive E.2.A.8.1.1. For a period of two years from late 1998 or early 1999 until December 2001, Applicant used cocaine two or three times a month. His last use occurred prior his arrest for possession of a controlled substance. Disqualifying Condition (DC) 1 (E2.A8.1.2.1. *Any drug abuse*). applies. All of his use occurred after he had been granted a secret security clearance. DC 5(E2.A8.1.2.5. *Failure to successfully complete a drug treatment program prescribed by a credentialed medical professional. Recent drug involvement, especially following the granting of a security clearance, or an expressed intent not to discontinue use, will almost invariably result in an unfavorable determination*) applies.

The Directive is silent on what constitutes a sufficient period of reform and rehabilitation.

However, such silence does not mean I have unfettered discretion in deciding what period of time is sufficient to demonstrate reform and rehabilitation. The sufficiency or insufficiency of an applicant's period of conduct without recurrence of past misconduct does not turn on any bright-line rules concerning the length of time needed to demonstrate reform and rehabilitation, but rather a reasoned analysis of the facts and circumstances of an applicant's case based on a careful evaluation of the totality of the evidence record within the parameters set by the Directive. Applicant's last use occurred approximately three years ago which is recent use.

Applicant has expressed he will not use illegal drugs in the future. Even if an applicant is sincere that he has no intention of using drugs in the future, I am not precluded from considering his statement in light of the record evidence as a whole in deciding whether the applicant is likely to adhere to such a commitment in the future. As a matter of common sense and human experience, people do not always successfully adhere to the promised to reform or change their conduct or lifestyle. Since this is a FORM, I have not had the opportunity to personally observe Applicant and evaluate his demeanor or veracity and make a favorable credibility determination. Therefore, I cannot make a favorable determination concerning his future intent.

Applicant used cocaine two or three times a month for a two-year period. Applicant believes he had developed a mild dependence on the drug. The record contains no medical evidence to either confirm or discount a dependence. His drug involvement was neither an isolated nor an aberrational event.

From January 2002 through December 2002, Applicant received treatment. From the single page entry in the FORM I am unable to evaluate his treatment to determine Applicant has satisfactorily completed a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional. The record is insufficient to make such a finding.

None of the Mitigating Conditions apply. I find against Applicant as to Drug Involvement.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

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

Paragraph 1 Drug Involvement: **AGAINST THE APPLICANT**

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: 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 the Applicant. Clearance is denied.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.