

KEYWORD: Drugs

DIGEST: Security concerns persist over Applicant's past drug use and purchase of marijuana. When he previously had access to classified information, he continued to use marijuana and even reported to work under the influence of marijuana in the 1979 to 1985 period when he knew such use was a violation of security policy. He continued to use from 1988 to September 2001 and also used marijuana with his teenage children. Even after he stopped using himself, he allowed marijuana use in his home in 2002. He has made positive changes, has a good work record, and has a favorable diagnosis by a credential medical professional, but it is not enough to mitigate these concerns given his earlier disregard of security policy. Clearance is denied.

CASENO: 02-30864.h1

DATE: 04/26/2005

DATE: April 26, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30864

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esquire, Department Counsel

FOR APPLICANT

Steven L. Murray, Esquire

SYNOPSIS

Security concerns persist over Applicant's past drug use and purchase of marijuana. When he previously had access to classified information, he continued to use marijuana and even reported to work under the influence of marijuana in the 1979 to 1985 period when he knew such use was a violation of security policy. He continued to use from 1988 to September 2001 and also used marijuana with his teenage children. Even after he stopped using himself, he allowed marijuana use in his home in 2002. He has made positive changes, has a good work record, and has a favorable diagnosis by a credential medical professional, but it is not enough to mitigate these concerns given his earlier disregard of security policy. 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 March 8, 2004. 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). Applicant responded to these SOR allegations in an Answer notarized on April 23, 2004, where he admitted all of the allegations and requested a hearing. In July 2004 he retained counsel.

The case was assigned to Department Counsel who in June 2004, attested it was ready to proceed. The case was assigned to another judge, but was reassigned to me on July 7, 2004. Subsequently, after a mutually convenient date for hearing was agreed to, a Notice of Hearing was issued on July 20, 2004, to set the matter for August 10, 2004, at a location near where Applicant works and lives.

At the hearing the Government offered two exhibits which were admitted into evidence. (Exhibits 1-2) Applicant's counsel called him to testify along with two other witnesses and offered three exhibits which were admitted into evidence. (Exhibits A-C) The transcript (TR) was received on August 20, 2004.

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, 53 years old, has worked as an engineer for a defense contractor (Contractor #1) since October 1994 and has worked in State #1 since July 1995. As Applicant needed a security clearance to perform a special project in State #2, he completed a Security Clearance Application (SF 86) in May 2002. However, he has since been assigned to another project in State #1, but still needs a security clearance. He worked for another defense contractor (Contractor #2) from 1990 to 1993 in State #3 and again from 1994 to 1995. Earlier he had worked for Contractor #3 from 1979 to 1986 in State #3 and from 1986 to 1989 in State #4. Initially, DoD granted him a Secret security clearance in April 1979 until 1988 when he no longer needed it. He served in the military from 1969 to 1973 and again from 1974 to 1978 in the inactive reserve. (Exhibit 1; TR 16-20, 24-28, 30-31; 50-52) Applicant attended a community college in State #2 from 1978 to 1979, but he did not complete a degree. Applicant was married in 1973 and had two children born in 1975 and 1980; in 2002 he and his wife separated, but they have since attempted to reconcile. (Exhibit 1; TR 31-32; 51)

Drug Use

On his security questionnaire in response to Question 27 Applicant disclosed his marijuana use 30-35 times from 1995 to September 2001; and in response to Question 28 he also disclosed his earlier use from 1979 to August 1986 after he had been granted a security clearance. (Exhibit 1)

Also, in his September 2002 interview with the DSS and in a subsequent statement, Applicant stated that because of peer pressure he had begun to use marijuana in 1971 and continued to use marijuana on a weekly basis until 1979. Then his use decreased as he was hired in the aerospace industry. However, he continued to use marijuana as he enjoyed the mild euphoria that marijuana helped him to achieve. While he worked for defense Contractor #3 from 1979 to 1985, he smoked marijuana on a quarterly to several times quarterly basis; he reported to work under the influence of marijuana ten to twenty times. He even once smoked marijuana in the company parking lot. The management of Contractor #3 never reprimanded him for his drug use or ordered him to go to drug counseling. He knew that such drug use while holding a security clearance was a violation of Department of Defense security policy. He abstained from marijuana from 1987 to 1988⁽²⁾ after he relocated and lost his circle of friends and source for marijuana. He began using marijuana again 30-35 times from 1988 to September 2001. He purchased marijuana from 1971 to 2000; and in the mid 1970's he cultivated marijuana. He also disclosed that he used cocaine once in the early 1970's. (Exhibit 2) He acknowledged in his Answer and also testified that his use of drugs while he had a security clearance was inappropriate

and wrong behavior. (Answer; TR 20-21, 23-24; 40-47; 88-89)

Applicant admitted from 1993-95 and again from 1999-2000 he also used marijuana with his two children after they had graduated from high school as his children provided the marijuana. (Exhibit 2; TR 47-48; 89)

Applicant stopped using drugs in September 2001 and has no intention of using illegal drugs in the future as he realized he is getting older. He presently has a physical fitness regimen and attempts to live in a healthy manner. He understands that Contractor #1 has a drug free workplace: and he would not want to jeopardize his job. However, he does not object to other people using marijuana at his home and allowed friends to do so in August 2002. (Exhibit 2; TR 36-38; 41-42)

Applicant never sought a substance abuse counselor, but recently went to the Employee Assistance Program (EAP) and get a referral for an evaluation in July 2004. (TR 34; Exhibits B, C)

Applicant consulted a state-certified addiction counselor in private practice who was accepted as an expert in the field of substance abuse. The expert administered several tests to Applicant, such as the Substance Abuse Subtle Screening Inventory (SASSI-3). Based on these tests and the fact that Applicant had not used marijuana from September 2001 to the present, the expert concluded that Applicant was not psychologically addicted to marijuana nor was he abusing substances at the time of the assessment. The expert believed that Applicant could remain drug free. He was also impressed with Applicant's honesty about his past drug use. (TR 63-79; 80-86; Exhibits B, C)

Job Performance

Applicant's former supervisor from 1997-99 (Mr. M) testified that was an excellent employee and was effective in supervising the people that worked underneath him. Applicant also worked on a program with him from 2002 to present but he does not supervise Applicant directly. Applicant never discussed his drug use with this supervisor until the time he asked him to testify when he disclosed his past use to Mr. M. Nevertheless he recommended Applicant for a security clearance as he believed him to be a trustworthy employee who could not be compromised. (TR 54-63; Exhibit A)

Applicant's Performance Assessment and Development Review document that he has been a "Successful Contributor" from April 2003 to December 2003 and a "Successful Contributor" from May 2001 to March 2002. In the May 2000 to May 2001 he was an average and low level producer and then improved. From ay 1998 to May 1999 he was assessed as an extremely competent employee with outstanding work output and received two awards in 1998. From May 1997 to May 1998 he was assessed as an extremely competent employee with a great deal of technical expertise. From May 1997 to June 1997 he was assessed overall as excellent and given "outstanding" on quantity and quality of his work as he volunteered for tasks above and beyond the normal scope of his job. From May 1996 to August 1996 he was assessed as Fully Successful. (Exhibit A)

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.

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 presents 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

Applicant failed to mitigate the Government's security concerns⁽³⁾ over his marijuana use and purchase of marijuana which continued even after he had been granted access to classified information in 1979 and continued until September 2001. He used marijuana initially on a regular basis and later on an intermittent basis. He also used it before he went to work in the 1979 to 1985 period and several times reported to work under the influence of marijuana. Once he even used marijuana in the parking lot at work. He has even used marijuana with his children after they graduated from high school. He used cocaine once in the early 1970's.

Applicant not sufficiently mitigated⁽⁴⁾

security concerns over his repeated marijuana use over a thirty year period. While he has recently reformed his lifestyle and performs well at work, Applicant's mitigation evidence is not sufficient to mitigate in the light of his disregard of security policies and his repeated use of marijuana before work so that he reported to work under the influence of marijuana in the 1979 to 1985 period when he had a security clearance. Further, he provided no evidence that he has developed any underpinnings to support his commitment to avoid all future drug use; for example, he never became involved in a 12-step program. He did seek out an assessment from an expert in the field who provided an opinion that Applicant was not psychologically addicted to marijuana nor was he abusing substances at the time of the assessment. The expert believed that Applicant could remain drug free. Given this earlier disregard of security policy, a favorable diagnosis of a credential medical professional is not enough to mitigate these concerns. Using marijuana while he held a security clearance remains a serious security concern.

Given the seriousness of his earlier disregard of security policies, his willingness to use marijuana with his teenage children, and his willingness to let his friends use marijuana in his home in August 2002, he has repeatedly shown poor judgment. Thus, he needs to continue his abstinence for a longer period of time to assure that he will not again use drugs while having access to classified information. Under Mitigating Condition (MC) 3, he has not yet persuasively demonstrated an intent not to abuse any drugs in the future.

On the other hand, he has mitigated the cocaine use since there is no evidence that he has used cocaine again since the early 1970's. Thus, he has mitigated SOR 1.h. under Mitigating Condition (MC) 1, as the cocaine use was not recent. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on

subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f. and 1.g. under SOR Paragraph 1.

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.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: For 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. While he stated in his Answer and testified he was abstinent from 1995-1999 and had little use of marijuana from 1999 to September 2001, I give that evidence little weight as these assertions are inconsistent with his admissions in the SF 86 of marijuana use from 1995 to September 2001 estimated 30-35 times and in the DSS Statement of continuous intermittent use about 30 to 35 times from 1988 to September 2001. (Answer; Exhibits 1, 2; TR 28)
3. **Conditions that could raise a security concern and may be disqualifying include:** 1. Any drug abuse (see above definition).
4. **Conditions that could mitigate security concerns include:** 1. The drug involvement was not recent;
2. The drug involvement was an isolated or aberrational event; 3. A demonstrated intent not to abuse any drugs in the future; 4. Satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable diagnosis by a credentialed medical professional.