

KEYWORD: Drugs; Personal Conduct; Financial; Criminal Conduct

DIGEST: Security concerns persist over Applicant's drug abuse, personal conduct, and criminal conduct over his recent use of drugs in 2002 after he applied for a security clearance. Also, he misrepresented his past use of drugs and his future intent to the Defense Security Service (DSS) in a signed, sworn statement in June 2002. While he stopped using drugs, overall, he failed to demonstrate clear evidence of successful rehabilitation. He resolved his long-standing financial issues so those dated debts no longer raise security concerns. Clearance is denied.

CASENO: 02-31151.h1

DATE: 02/28/2006

DATE: February 28, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-31151

**DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

John Ryan, Esquire

Joseph Johnson, Esquire

**SYNOPSIS**

Security concerns persist over Applicant's drug abuse, personal conduct, and criminal conduct over his recent use of drugs in 2002 after he applied for a security clearance. Also, he misrepresented his past use of drugs and his future intent to the Defense Security Service (DSS) in a signed, sworn statement in June 2002. While he stopped using drugs, overall, he failed to demonstrate clear evidence of successful rehabilitation. He resolved his long-standing financial issues so those dated debts no longer raise security concerns. 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 November 18, 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. <sup>(1)</sup> The SOR alleges specific concerns over drug abuse (Guideline H), personal conduct (Guideline E), financial issues (Guideline F) and criminal conduct (Guideline J). Through counsel Applicant responded to these SOR allegations in an Answer notarized on December 7, 2004, and requested a hearing.

After Department Counsel stated the case was ready to proceed on August 31, 2005, the case was assigned to me on September 6, 2005. Because of scheduling problems with Applicant's counsel, the scheduling of the hearing was delayed. On November 10, 2005, DOHA issued a Notice of Hearing and set this case to be heard on November 29, 2005, in a city near where Applicant lives and works.

At the hearing the government presented seven exhibits (Exhibits 1-7) which were admitted into evidence without objection. Applicant's counsel offered three exhibits (Exhibits A-C) which were admitted into evidence without objection. Applicant and his wife testified. The transcript (TR) was received on December 8, 2005.

### 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, 58 years old, has been the owner/operator of a trucking company from September 1999 to present. He needs a security clearance because of the nature of the goods he hauls. He completed a SF-86 security clearance application in April 2001. The second driver who works with him is his wife. (Exhibits 1, 2; TR 21-24) He was granted an interim security clearance in 2002. (TR 65)

Applicant has been married since December 1965 and has two children born in 1966 and 1981. (Exhibit 1) He graduated from a state university with a degree in marketing in 1969. He took over his family farm in 1977 and still operates the farm. (TR 21)

### **Drugs, Personal Conduct, Finances and Criminal Conduct**

On his 2001 Security Clearance Application Applicant disclosed no prior use of drugs, but did disclose an arrest in 1991 for possession for which he received probation. In his Defense Security Service (DSS) interview in June 2002, Applicant clarified that he was arrested for Felony Possession of Marijuana. In 1988-89 he began growing marijuana on his farm for profit and selling small amounts to friends for \$100 per ounce. He sold marijuana for two to three years and used the profit for family living expenses. He tried marijuana but did not become a regular user. While he was growing marijuana and after his arrest, he and his wife were separated in from 1990 to 1991 as she opposed his growing marijuana. He began racing motorcycles and also used cocaine during this period from 1990-91. When an employee living on his farm was caught in 1991 with 28 grams of marijuana in his van, Applicant was arrested in January 1991 and pleaded guilty to Felony Possession of Marijuana and was placed on unsupervised probation for five years. He stated to DSS that he "completed" his probation "without incident and never had any further involvement with marijuana or any other illegal substance." Also, he had "no intention of doing so in the future." When he signed the statement, he attested that it was true and correct. However, he failed to acknowledge to the DSS agent his 1990-91 use of cocaine. His future conduct did not demonstrate that he fulfilled his intent not to use illegal drugs in the future. (Exhibits 2, 5; TR 25-26, 30-31, 36, 44-50, 57-60, 61, 63-65) Also, in his Answer to the SOR he denied using cocaine in 1990-91. (Answer; TR 53-54)

In January 2004 he admitted in a DSS statement that he "failed to acknowledge" in his prior statement that he "had used cocaine on several occasions during the 1980's." After his prior arrest he had participated in a counseling program in lieu of going to prison where he told them that he had been "addicted to cocaine." He explained he had exaggerated his use of cocaine in the 1980's to be accepted into the counseling program instead of having to serve time in prison. He did possess and use cocaine in 1990-91. While he claimed he had no intent to misrepresent his involvement with drugs in his DSS Statement in June 2002, that denial is not credible given his earlier misrepresentation about his drug use to his probation officer and counselor to avoid prison time and his subsequent drug involvement. He admitted that subsequent to his June 2002 interview he had another drug-related incident as he illegally obtained three grams of methamphetamine and used it to try to lose weight. When he returned to work, he tested positive for methamphetamine in September 2002. He was suspended for thirty days and again went to a treatment center for assessment and counseling in September 2002 where they recommended that he attend a 12-step self-help program and be given regular drug screens. (Answer, Exhibits 3, 4; TR 25-26, 31-34, 55-57, 60, 62)

Applicant has also had financial problems which developed after he started a catering business in 1992 that was initially successful but later became too burdensome. As a result of the catering business, he developed debts. He had a truck repossessed in 1998; later the creditor obtained a judgement of \$6,000 in February 2000 for the balance owed after resale. In September 2000 the court ordered a wage garnishment. In June 2002 Appellant said he intended to pay this account in full. However, he did not do so until July 2005. Another account was placed for collection in October 1999 on which he owed over \$9,000. Ultimately, the amount owed grew to \$19,180. He settled that amount owed for \$6,500 in February 2005. (Answer, Exhibits 2, 7; Exhibits B, C; TR 22-23, 38-40)

Currently, he and his wife have two credit cards where they are current with payments. His farm and home are paid for as are his vehicles. (TR 37-38) He and his wife recently started a college scholarship program with a local high school. (TR 41-44)

## References

The director of operations for his firm stated in November 2005 that Applicant was a reliable, safe, and qualified driver. (Exhibit A)

Applicant's wife who is 57 testified she has worked in the trucking business with her husband since 2000 and has a security clearance. She described her husband as a happy man. Their annual income is approximately \$100,000. (TR 66-72)

## 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**

**E.2.A.8.1.1. *The Concern:* 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.**

### **Guideline F - Financial Considerations**

***The Concern:* An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.**

### **Guideline E - Personal Conduct**

**E2.A5.1.1. *The Concern:* 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.**

### **Guideline J - Criminal Conduct**

**E2.A10.1.1. *The Concern:* A history or pattern of criminal activity creates doubt about a person's judgment,**

## **reliability and trustworthiness.**

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**

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

The Government established security concerns over Applicant's drug use and sales as illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. He sold marijuana from fall 1988 to his arrest in January 1991. He also used cocaine from 1990-91 and used methamphetamines in 2002. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information. His actions fall within conditions that could raise a security concern and may be disqualifying including: E2.A8.1.1.2.1. (any drug abuse) and E2.A8.1.1.2 2. (illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution).

While Applicant mitigated <sup>(2)</sup> security concerns over his earlier use of cocaine and 1989-91 sales of marijuana as he successfully completed probation, he returned to use drugs subsequently after he had executed a security clearance application in April 2002 and after he had sworn in June 2002 that he would not use drugs again. Thus, E2.A8.1.1.3.1. (no recent drug involvement) does not apply to his recent methamphetamine use. Security concerns persist. Thus, I conclude that the factors leading to the later drug involvement raise concerns as he did not provide sufficient evidence in mitigation. His drug involvement was not isolated and he had not completed a drug treatment program.

Hence, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant under subparagraphs 1.e. and 1.f. and against Applicant on subparagraphs 1.a. through 1.d. incorporated under SOR Paragraph 1.

## Personal Conduct

Also, the Government established security concerns over Applicant's Personal Conduct because of his false statement to DSS in June 2002 that he had never used cocaine when he had used in 1990-91. Also, while he stated an intent never to use drugs in the future, he did use again in September 2002 shortly after he provided a statement pledging abstinence. Thus, Applicant falls within Disqualifying Conditions E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trust-worthiness determination and E2.A5.1.2.5, a pattern of dishonesty or rule violations. None of Applicant's explanations meet the mitigation<sup>(3)</sup> guidelines. While not alleged, I note that he also falsified the extent of his use of cocaine to his probation officer after his 1991 arrest in order to stay in a treatment program and avoid serving time in prison.

Looking at Applicant as a whole person<sup>(4)</sup> and considering the circumstances surrounding his conduct (E2.2.1.2), I conclude Applicant failed to provide sufficient evidence of a current record of rehabilitation and pertinent behavioral changes even though he has a favorable employment reference. Overall, I conclude that he has failed to provide sufficient evidence of reform over these personal conduct issues. Thus, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant under SOR Paragraph 2 under subparagraph 2.a.

## Financial Considerations

Applicant mitigated the Government's security concerns under Financial Disqualifying Condition (E2.A6.1.2.1. history of not meeting financial obligations, E2.A6.1.2.3. inability or unwillingness to satisfy all of his debts). Applicant had two large debts: in one matter a judgment was entered in 2000 which he did not resolve until 2005 and with another large debt he did not settle it until 2005. Despite this long delay, Applicant eventually took action to resolve these financial concerns. He is now on a stable financial footing.

Thus, Applicant has shown financial responsibility under E2.A6.1.3.6. as there are now clear indications that the problem is being resolved or is under control with respect to these two debts. Applicant mitigated<sup>(5)</sup> these financial concerns as he also has a favorable reference from his employer. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant under subparagraphs 3.a. and 3.b. where he has resolved financial issues under SOR Paragraph 3.

## Criminal Conduct

The Government established security concerns<sup>(6)</sup> over Applicant's criminal conduct as he falsified a statement to the DSS about his past and future drug use which is a violation of 18 U.S.C. Section 1001 as discussed above under Personal Conduct. The government security program relies on the honesty of applicants. While Applicant provided evidence of a successful work record, he failed to provide sufficient evidence to establish that he meets any of the mitigating conditions for criminal conduct. For example, he provided insufficient evidence to establish MC 6 (E2.A10.1.3.6): clear evidence of successful rehabilitation. Establishing a college scholarship program while commendable does not mitigate intentional falsification to the government. Thus, Applicant has failed to mitigate<sup>(7)</sup> his criminal conduct. Consequently, I conclude that the factors leading to the earlier falsification may still recur. Hence, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraph 4.a. incorporated under SOR Paragraph 4.

### **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.: For Applicant

Subparagraph 1.f.: For Applicant

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

Subparagraph 2.a.: Against Applicant



Paragraph 3. Guideline F: FOR APPLICANT

Subparagraph 3.a.: For Applicant

Subparagraph 3.b.: For Applicant

Paragraph 4. Guideline J: AGAINST APPLICANT

Subparagraph 4.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. Clearance is denied.

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. **E2.A8.1.1.3. Conditions that could mitigate security concerns include:** E2.A8.1.1.3.1. The drug involvement was not recent; E2.A8.1.1.3.2. The drug involvement was an isolated or aberrational event; E2.A8.1.1.3.3. A demonstrated intent not to abuse any drugs in the future; E2.A8.1.1.3.4. 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.
3. **E2.A5.1.3. Conditions that could mitigate security concerns include:** E2.A5.1.3.1. The information was

unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability; E2.A5.1.3.2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily; E2.A5.1.3.3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts; E2.A5.1.3.4. 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; E2.A5.1.3.5. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress; E2.A5.1.3.6. 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; E2.A5.1.3.7. Association with persons involved in criminal activities has ceased.

4. In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors: E.2.21.1. The nature, extent, and seriousness of the conduct; E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation; E2.2.1.3. The frequency and recency of the conduct; E2.2.1.4. The individual's age and maturity at the time of the conduct; E2.2.1.5. The voluntariness of the participation; E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes; E2.2.1.7. The motivation for the conduct; E2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and E2.2.1.9. The likelihood of continuation or recurrence.  
(E.2.2. Adjudication Process)

5. **E2.A6.1.3. Conditions that could mitigate security concerns include:** E2.A6.1.3.1. The behavior was not recent; E2.A6.1.3.2. It was an isolated incident; E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation); E2.A6.1.3.4. The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control; E2.A6.1.3.5. The affluence resulted from a legal source; and E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

**6. E2.A10.1.2. Conditions that could raise a security concern and may be disqualifying include:**

E2.A10.1.2.1 Allegations or admissions of criminal conduct, regardless of whether the person was formally charged.;  
E2.A10.1.2.2. A single serious crime or multiple lesser offenses.

7. **E2.A10.1.3. Conditions that could mitigate security concerns include:** E2.A10.1.3.1. The criminal behavior was not recent; E2.A10.1.3. 2. The crime was an isolated incident; E2.A10.1.3.3. The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life; E2.A10.1.3. 4. The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur; E2.A10.1.3. 5. Acquittal;  
E2.A10.1.3.6 There is clear evidence of successful rehabilitation.