

DATE: June 28, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-15131

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Deputy Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's personal conduct raised security concerns when he failed to meet his duty to disclose fully his past marijuana use on both his 1985 security form and 2000 security form (where he did admit he was arrested and convicted for drug paraphernalia in 1998), and in his initial 2001 investigative interview with the Defense Security Service (DSS). In a subsequent DSS interview in 2002, he admitted his marijuana use in 1998 admission in a signed, sworn statement which he now disclaims. However, I cannot give any weight to his subsequent disclaimer as he has limited credibility after his history of admitted false and self-serving denial of his prior drug use in his 1985 security application. Thus, he failed to mitigate these personal conduct 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 August 4, 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 the Applicant. ⁽¹⁾ The SOR alleges specific concerns in paragraph 1 over personal conduct (Guideline E). Applicant responded to these SOR allegations in an Answer notarized on August 23, 2003, and denied allegations 1.a. through 1.c. and admitted 1.d.. He did not request a hearing.

On November 21, 2003, Department Counsel prepared a File of Relevant Material (FORM) which was forwarded to Applicant on December 1, 2003, where he was advised he had an opportunity to review the form, but needed to respond within 30 days of receipt of the letter. He received the FORM on January 5, 2004; so his response was due on February 4, 2004. On January 14, 2004, he submitted his response (Exhibit A) where he objected to the admissibility of Item 7 as he argued that it contained "misleading information." ⁽²⁾ On January 28, 2004 Department Council indicated that she did not object to his submission.

Subsequently, on February 2, 2004, the FORM was assigned to me. I admitted Exhibit A into evidence; however, I

overruled his objection to Item 7, his statement of March 2002 as he had signed and sworn to its accuracy and he provide no evidence to establish that it was coerced.

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, 51 years old, has been employed by Company #1, a defense contractor in State #1, since April 1984. Applicant received a BSEE in 1983 in State #2. (Items 4, 5; Exhibit A)

He married in 1981 and has four children. (Items 4,5)

Personal Conduct

When Applicant applied for a security clearance in March 2000, he completed a Security Clearance Application (Standard Form 86) (SF 86). (Items 4, 5) Previously, Applicant admits that he completed a Personnel Security Questionnaire in May 1985, where he misled the government by concealing his use of marijuana during his college years. (Applicant's assertion that he falsified on the advice of employment counselors and relatives so as not to jeopardize his employment opportunity is not a basis for mitigation.) (Items 3, 8; Exhibit A)

- Applicant failed to disclose on the March 2000 SF 86 in response to Questions 27 and 28 that he had used marijuana in 1998 when he was on a golf outing with friends in State #2 when his "guard was down." Applicant conceded that he knew that such drug use was inconsistent with having a security clearance. He did disclose in answer to Question 24 that he was given a ticket for possession of drug paraphernalia in October 1998. He later explained to DSS that he hired an attorney to represent him, who entered a guilty plea on his behalf, where he paid a fine of \$300. (Items 5, 6, 7) falsely claimed that he had not smoked marijuana during this incident. (Item 6) because he knew the implications that such use might have for his security clearance and job. (Item 7) He subsequently characterized this interview as an "emotionally difficult interrogation." (4) (Exhibit A) he stated he would not use any narcotic or dangerous drug in the future. (Item 9)

Applicant stated that he has been employed at his firm for 19 years and has never had any accusation or hint of impropriety, dishonesty or lack of integrity and has earned several awards for outstanding conduct and performance. (Exhibit A) However, he provided no references or job evaluations.

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 in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

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.

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;

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;

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. Then 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

Personal Conduct

Applicant failed to reveal his past use of marijuana on either his initial SF 86 form in 1985 nor his SF 86 form in 2000. This failure to disclose relevant and material information led the government to raise security concerns over his personal conduct. Disqualifying Conditions (DC) that could raise a security concern and may be disqualifying 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 and (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. Applicant's omission of relevant and material information reflects questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations and could indicate that he may not properly safeguard classified information.

Applicant's defenses and explanations for his omissions are not persuasive to rebut and overcome the Government's security concerns. While he subsequently disputed his 2002 admission in a signed, sworn statement of his marijuana use in 1998 (when he admitted he was arrested and convicted for drug paraphernalia), I cannot give any weight to his subsequent disclaimer as he has limited credibility based on his admitted false and self-serving denials over his past drug use in his 1985 security application. His credibility is questionable as he conceded that he deliberately failed to disclose his college marijuana use on his initial security clearance questionnaire in 1985 in order to obtain his job. While he did disclose his 1998 arrest for drug paraphernalia, he subsequently provided a series of inconsistent statements on whether or not he used marijuana with his friends again in 1998. Thus, I do not accept his subsequent denial in his response to the FORM of any drug use in 1998 as it contradicts his earlier admission. Further, the falsification is not an isolated incident as he gained his position initially by failing to disclose his college drug use.

While Applicant generally views himself as a person of integrity and honesty, he failed to supply corroborating evidence from his professional and/or personal life. After looking at the whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraph 1.a..

through 1.d. 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 E: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: 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. Department Council did not respond to this objection to Item 7 where Applicant argued that the "condemning statement of March 8, 2002 (4) is incorrect as stated, and was obtained under considerable influence from the DoD agent immediately after subjection to the lie detector test." Nevertheless, Applicant conceded that he signed the statement, knowing it contained misleading information, but in the "spirit of compromise." Since Applicant voluntarily signed this statement, his subsequent protest is not a basis to exclude it from the record as he failed to establish by any objective evidence that the Statement was coerced. Clearly, if he thought this matter would turn on the question of credibility, then he could have requested a hearing to provide evidence to support his argument that he was influenced by the DSS agent. Indeed, being influenced is not the same as being coerced.
3. While he later claimed this March 2002 DSS statement was given under duress, he did not establish duress. Although he subsequently argued that there were "extenuating circumstances under which it was created and signed," Applicant does not explain or establish what those circumstances were. For example, he failed to explain what actions the DSS agent took which showed duress. Nor did he overcome the fact that he voluntarily signed this statement. His willingness to sign it to demonstrate a "spirit of compromise" further suggests that there was no coercion. Consequently, I have not excluded Item 7 from consideration as he requested. (Exhibit A)
4. Even his characterization of the interview as "emotionally difficult" is an insufficient basis to establish that the DSS Statement was coerced and should be exclude. (Exhibit A)