

KEYWORD: Drugs; Personal Conduct

DIGEST: Applicant has failed to mitigate his illegal drug use and three deliberate falsifications on his security clearance application in an effort not to reveal the drug abuse. His contention that he only used marijuana on two occasions in his life is not supported by the record. The same year Applicant submitted his SF 86 he had been fired by an employer after testing positive for marijuana on two drug screening tests. Seven years earlier, his security clearance was suspended as a result of him tampering with his urine sample for a drug screening test. Twelve years before that, Applicant received non-judicial punishment for possession of marijuana. Applicant also impeached himself by testimony that was inconsistent with his statement to a DSS investigator. Clearance is denied.

CASENO: 02-15537.h1

DATE: 09/24/2004

DATE: September 24, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-15537

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has failed to mitigate his illegal drug use and three deliberate falsifications on his security clearance application in an effort not to reveal the drug abuse. His contention that he only used marijuana on two occasions in his life is not supported by the record. The same year Applicant submitted his SF 86 he had been fired by an employer after testing positive for marijuana on two drug screening tests. Seven years earlier, his security clearance was suspended as a result of him tampering with his urine sample for a drug screening test. Twelve years before that, Applicant received non-judicial punishment for possession of marijuana. Applicant also impeached himself by testimony that was inconsistent with his statement to a DSS investigator. Clearance is denied.

STATEMENT OF THE CASE

On September 25, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order ⁽¹⁾ and Department of Defense Directive, ⁽²⁾ issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline H (Drug Involvement) and Guideline E (Personal Conduct). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant him access to classified information and recommends that his case be submitted to an Administrative Judge.

On October 14, 2003, Applicant answered the SOR and requested a hearing. The case was assigned to me on January 30, 2004. A notice of hearing was issued on February 20, 2004 and the hearing was held on April 1, 2004. During the hearing, eight Government exhibits (Govt Ex) and the testimony of two Applicant witnesses, including Applicant, were received. The transcript (Tr) was received on April 14, 2004.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is a 44-year-old courier employed by a defense contractor. From July 1980 until July 1983, Applicant served as an enlisted member of the United States Army.

On August 15, 1981, Applicant received non-judicial punishment for possession of marijuana. He was reduced in rank, ordered to forfeit \$100.00, and placed on 14 days restriction (SOR ¶ 1.g).

On March 29, 1993, Applicant tampered with a urine sample he submitted during a random drug test. He diluted his urine sample with heated water. As a result, the United States Navy, his employer, temporarily suspended his security clearance. The results of the drug test were negative and the Navy reinstated Applicant's security clearance in May 1993 (SOR ¶ 1.f).

Applicant used cocaine in July 1995 (SOR ¶ 1.d). He resigned from his employment after testing positive for cocaine during a drug screening (SOR ¶ 1.e).

In September 1999, Applicant tested positive for illegal drug use during a random drug test required by his previous employer (SOR ¶ 1.b). After again testing positive for illegal drug use during another random drug test on February 2, 2000, Applicant' previous employer terminated him (SOR ¶ 1.a, c).

On October 3, 2000, Applicant executed a security clearance application (SF 86). In response to question 20 regarding his employment record, he admitted his employment was terminated in February 2000. However, Applicant deliberately failed to disclose that his termination resulted from illegal drug use (SOR ¶ 2.a).

In response to question 27-⁽³⁾ on the same SF86, Applicant answered, "no." He deliberately failed to report his use of cocaine in 1995 and his use of marijuana in 1999 and 2000 (SOR ¶ 2.b).

In response to question 32-⁽⁴⁾ on the same SF86, Applicant answered, "no." He deliberately failed to report that his security clearance had been suspended in arch 1993 (SOR ¶ 2.c).

On January 23, 2002, Applicant provided a sworn statement to a DSS investigator. Applicant admitted his use of

cocaine in 1995 and his use of marijuana as a member of a car pool in September 1999. He asserted that he shall never use it again. Applicant indicated that he tested positive for marijuana in February 2000 because of attending a party at which he had not used but merely inhaled marijuana that was smoked by others.

POLICIES

Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted. Directive E3.1.14. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

Guideline H: Drug Involvement

The concern under Guideline H is that 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.

Conditions that could raise a security concern and may be disqualifying under Guideline H include E2.A8.1.2.1, any drug abuse (Disqualifying Condition 1). Conditions that could mitigate security concerns include E2.A8.1.3.1, the drug involvement was not recent (Mitigating Condition 1). They also include E2.A8.1.3.3, a demonstrated intent not to abuse any drugs in the future (Mitigating Condition 3).

Guideline E: Personal Conduct

The concern under Guideline E is 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 under Guideline E include E2.A5.1.2.2 (Disqualifying Condition 2). Disqualifying Condition 2 addresses 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.

Conditions that could mitigate security concerns include E2.A5.1.3.3 (Mitigating Condition 3). Mitigating Condition 3 applies when the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts.

CONCLUSIONS

Guideline H: Drug Involvement

Applicant's drug-related incidents over a period of two decades raise Disqualifying Condition 1. He received non-judicial punishment for possession of marijuana while a member of the military in August 1981. Applicant tampered with his urine sample for drug testing that he submitted to his employer in arch 1993. He resigned from his employment in 1995 after testing positive for cocaine. Positive tests for marijuana in September 1999 and February 2000 lead to Applicant's employer terminating him. He has admitted using both cocaine and marijuana.

Applicant's last positive test for marijuana occurred the same year he submitted the SF 86 that is pending in this case. Therefore, he cannot maintain that his drug use was not recent.

Applicant claims that his only use of cocaine in 1995 resulted from his wife leaving him and taking his kids away. This may be the case since there is no other record of his use of cocaine.

Applicant's asserts that he will not use marijuana in the future but the record fails to demonstrate this as required by Mitigating Condition 3. Applicant testified that he only actually used marijuana twice in his life, once as a youth and at a party in January 2000. He claimed his non-judicial punishment in 1981 involved merely holding, not using, a marijuana joint. Applicant also said he tampered with his urine sample in 1993 not because of using marijuana but because of being exposed to it when his sister and her boyfriend visited him. Such contentions became highly questionable after Applicant impeached his own credibility by his inconsistent statements. He told the DSS investigator that he smoked marijuana as a member of a car pool in September 1999 but that his dismissal in 2000 resulted from attending a party at which he had simply inhaled but not smoked marijuana. In his testimony, however, Applicant's story changed: he inhaled marijuana as a member of the car pool but he smoked marijuana at the party. In the face of this record, I find against Applicant with regard to SOR ¶ 1.

Guideline E: Personal Conduct

Applicant admitted that he deliberately lied on his security clearance application so as not to report his illegal drug use, including being fired on one occasion for such use and having his security clearance temporarily suspended. This establishes Disqualifying Condition 2. Applicant testified that he admitted his drug use to the DSS investigator. However, this was more than a year after submitting his SF 86. Moreover, Applicant failed to establish that he did so before the investigator confronted him with the facts. Therefore, the evidence fails to support Mitigating Condition 3. The record fails to provide any basis for mitigating Applicant's falsifications on his SF 86. Therefore, I find against him with regard to SOR ¶ 2.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

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

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

DECISION

In light of all the evidence in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Signed

Roger E. Willmeth

Administrative Judge

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.
3. "Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for

example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.) or prescription drugs?"

4. "To your knowledge have you ever had a clearance or access authorization denied, suspended, or revoked, or have you ever been debarred from government employment?"