

KEYWORD: Drugs; Alcohol; Personal Conduct

DIGEST: Applicant has mitigated both his alcohol abused and his illegal drug abuse, including an extensive use of cocaine. There is no evidence he has abuse either substance in over five years. Applicant successfully completed a substance abuse counseling program in 1999 and continues to attend AA meetings on a weekly basis and confers with his sponsor. He was baptized, attends church regularly, and has gained the support of a certified alcohol and drug addiction counselor whom he married. However, Applicant has failed to mitigate the omission of his drug abuse, drug-related arrests, and substance abuse counseling from his security clearance application. His admissions to a DSS investigator more than a year after submitting his SF 86 were not a prompt, good-faith effort within the meaning of Mitigating Condition 3. Clearance is denied.

CASENO: 02-19698.h1

DATE: 09/29/2004

DATE: September 29, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-19698

**DECISION OF ADMINISTRATIVE JUDGE**

**ROGER E. WILLMETH**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

Joe C. Ashworth, Esq.

**SYNOPSIS**

Applicant has mitigated both his alcohol abuse and his illegal drug abuse, including an extensive use of cocaine. There is no evidence he has abused either substance in over five years. Applicant successfully completed a substance abuse counseling program in 1999 and continues to attend AA meetings on a weekly basis and confers with his sponsor. He was baptized, attends church regularly, and has gained the support of a certified alcohol and drug addiction counselor whom he married. However, Applicant has failed to mitigate the omission of his drug abuse, drug-related arrests, and substance abuse counseling from his security clearance application. His admissions to a DSS investigator more than a year after submitting his SF 86 were not a prompt, good-faith effort within the meaning of Mitigating Condition 3. Clearance is denied.

**STATEMENT OF THE CASE**

On August 5, 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), Guideline G (Alcohol Consumption) 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 August 28, 2003, Applicant answered the SOR and requested a hearing. On December 22, 2003, Department Counsel issued an amended SOR that was answered by Applicant on February 25, 2004. The case was assigned to me on January 5, 2004. A notice of hearing was issued on January 29, 2004 and the hearing was held on February 25, 2004. During the hearing, sixteen Government exhibits (Govt Ex) and the testimony of two Applicant witnesses, including Applicant, were received. The transcript (Tr) was received on March 4, 2004.

## FINDINGS OF FACT

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

Applicant is a 54-year-old computer engineer employed by a defense contractor. He is seeking a security clearance.

Between 1980 and 1999, Applicant used cocaine, marijuana, heroin, LSD and PCP (SOR ¶ 1.a). On September 5, 1995, he was admitted to an adult rehabilitation center for drug and alcohol abuse. On June 17, 1996, Applicant was released from the program to outside transition (SOR ¶ 1.b).

On November 5, 1996, Applicant executed a security clearance application (SF 86). In response to question 21, <sup>(3)</sup> he reported his substance abuse counseling in 1995-1996. In response to question 24 <sup>(4)</sup> on the same SF 86, Applicant answered, "yes," but only reported the use of marijuana on six occasions and omitted his extensive use of cocaine.

On July 28, 1997, Applicant was telephonically screened for re-admission into an adult rehabilitation center for drug and alcohol abuse. On August 1, 1997, he was denied entry into the center because his urine tested positive for cocaine. After testing negative for drugs on August 6, 1997, Applicant was admitted to the center's 120 day program. However, he left the program after 60 days (SOR ¶ 1.c).

On March 3, 1998, Applicant executed a security clearance application (SF 86). In response to question 21, <sup>(5)</sup> he reported his substance abuse counseling in 1997. In response to question 24 <sup>(6)</sup> on the same SF 86, Applicant answered, "yes," but only reported the use of marijuana on six occasions and omitted his extensive use of cocaine.

On May 1, 1998, Applicant was arrested and charged with the purchase of a noncontrolled substance reasonably believed to be a controlled substance. He purchased what he believed to be cocaine from an undercover police officer. Prosecution of the case was deferred and Applicant was required to complete a drug rehabilitation program at a drug counseling center (SOR ¶ 1.d). He was admitted to that program on October 13, 1998 and was discharged on February 11, 1999. As a result of his participation in the program, Applicant was recommended for a treatment program and participation in a 12-step recovery program (SOR ¶ 1.e).

On March 20, 1999, Applicant was arrested and charged with possession of a controlled dangerous substance, crack cocaine, and possession of drug paraphernalia (SOR ¶ 1.f). The arrest occurred when a police officer responded to an altercation he was having with his girlfriend. On May 7, 1999, Applicant was re-admitted to a drug counseling center and diagnosed with cocaine and alcohol abuse addiction. In August 1999, he successfully completed a 17-week substance abuse program. Applicant was discharged with a recommendation that he attend AA meetings and work with a sponsor (SOR ¶ 1.g, 2.b).

In March or April of 1999, Applicant was arrested and charged with driving under the influence of alcohol (DUI). On August 3, 1999, he was placed on probation for 24 months and ordered to complete counseling at a drug counseling center and to attend AA meetings three times a week (SOR ¶ 2.a). Applicant has continued attend AA meetings on a weekly basis and maintain contact with his sponsor.

On April 6, 1999, Applicant was charged with second degree assault. This resulted from an incident involving his girlfriend on March 20, 1999 that resulted in his arrest on drug charges. Applicant had been drinking alcohol. During an argument, he grabbed and poked his girlfriend in the face.

On January 6, 2000, Applicant executed a security clearance application (SF 86). In response to question 24, <sup>(7)</sup> Applicant answered, "no," and omitted his illegal drug use (SOR ¶ 3.a).

In response to question 23-<sup>(8)</sup> on the same SF 86, Applicant only reported his DUI arrest in 1999. He omitted his drug arrests on May 1, 1998 and March 20, 1999 and his arrest for assault on April 6, 1999 (SOR ¶ 3.b).

In response to question 21-<sup>(9)</sup> on the same SF 86, Applicant answered, "no." He omitted his counseling for drug abuse (SOR ¶ 3.c).

On June 2, 2000, Applicant was married. His wife is a certified alcohol and drug addiction counselor.

On February 27, 2002, Applicant provided a sworn statement to a DSS investigator. Applicant admitted his extensive use of cocaine, including the fact he used it at least 150 times in 1993. He also admitted his use of marijuana, claiming he only used it 15 times after high school.

## 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 G: Alcohol Consumption

The concern under Guideline G is that excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness. Conditions that could raise a security concern and may be disqualifying under Guideline G include E2.A7.1.2.1, alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use (Disqualifying Condition 1).

Conditions that could mitigate security concerns include E2.A7.1.3.2, the problem occurred a number of years ago and there is no indication of a recent problem (Mitigating Condition 2). They also include E2.A7.1.3.3, positive changes in behavior supportive of sobriety (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 admitted use of cocaine and marijuana, including two cocaine-related arrests, supports Disqualifying Condition 1. However, there is no evidence of any drug abuse by Applicant since March 1999. Following successful completion of a substance abuse program in August 1999, Applicant has maintained contact with his sponsor. He was baptized and attends church on a regular basis. Applicant also gained the support of an alcohol and drug addiction counselor whom he married in 2000. The record supports both Mitigating Condition 1 and Mitigating Condition 3. Therefore, I find in favor of Applicant with regard to SOR ¶ 1.

#### Guideline G: Alcohol Consumption

Applicant's admitted abuse of alcohol, including his DUI arrest in 1999, raises Disqualifying Condition 1. However, there is no evidence that Applicant has consumed alcohol since May 1999. <sup>(10)</sup> Since the successful completion of a substance abuse program in August 1999, Applicant continues to attend AA meetings on a weekly basis and maintains contact with his sponsor. As previously explained, he attends church and has the support of his wife. The record supports Mitigating Condition 2. Accordingly, I find in favor of Applicant with regard to SOR ¶ 2.

#### Guideline E: Personal Conduct

Applicant's omission of his drug-related criminal record, his drug abuse and his treatment for substance abuse on his security clearance application raises Disqualifying Condition 2. Applicant denies that his omissions were deliberate. He testified that he did not associate his substance abuse counseling with the mental health counseling referred to in question 21 of the SF 86. With regard to question 23, Applicant claims he did not report his drug-related arrests because they did not result in convictions. He attributes his failure to report his drug history in response to question 24 to being rushed by his employer to complete the form. Applicant also asserted he gave a full accounting to the DSS investigator before being confronted with the facts.

Applicant's explanations for his responses on the SF 86 are troubling in light of the entire record. Although he states that he did not associate his substance abuse counseling with the mental health counseling referred to in question 21, he demonstrated no such confusion when he completed an SF 86 in 1996 and again in 1998. In each case, Applicant listed his substance abuse counseling. At the time he completed his current SF 86, Applicant was required to list no less than four periods of substance abuse counseling.

Applicant's responses to question 24 on the earlier applications is also enlightening. He attributes his failure to list his drug history in response to question 24 on his current SF 86 to being rushed to complete the form. However, Applicant's earlier responses were not forthcoming. In each instance he only acknowledged six uses of marijuana. Applicant not only understated his marijuana use but he totally ignored his far more extensive use of cocaine. His earlier responses

cast serious doubt on his explanation for failing to acknowledge any drug abuse on his current SF 86. They also call into question his explanation for omitting his drug-related arrests in response to questions 23.

Applicant contends that he admitted his drug use to the DSS investigator and is thereby entitled to the application of Mitigating condition 3. However, this occurred more than a year after Applicant submitted his SF 86. Mitigating Condition 3 requires more than correcting the falsifications. The individual must do so in a prompt, good-faith manner. Having waited until summoned by an investigator more than a year after submitting an SF 86, Applicant's disclosures were not a prompt, good-faith effort within the meaning of Mitigating Condition 3. ADP Case No. 30-1130 (January 4, 2001) at p. 6. Having failed to mitigate multiple falsifications on his SF 86, I find against Applicant with regard to SOR ¶ 3.

## FORMAL FINDINGS

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

Paragraph 1. Guideline H: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Paragraph 2. Guideline G: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant



Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Subparagraph 3.b: Against Applicant

Subparagraph 3.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. "In the last 7 years, have you consulted with a mental health professional (psychiatrist, psychologist, counselor, etc.) or have you consulted with another health care provider about a mental health related condition?"
4. "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?"
5. See footnote 3.
6. See footnote 4.
7. See footnote 4.
8. "Your police record."
9. See footnote 3.

