

KEYWORD: Drugs, Personal Conduct

DIGEST: Applicant mitigated security concerns over his minimal use of marijuana from 1997 to 1999 when he had access to classified information as he subsequently disclosed this use and made positive changes in his life style. He thus established his intent not to abuse any drugs in the future by his responsible conduct at work demonstrated by his excellent evaluations and references. Since he abstained from all other drug use since 1985, he also mitigated those concerns as his drug involvement has not been recent. While personal conduct concerns were alleged over his failure to detail this earlier drug use on a 1991 security form, that question on drug use required a disclosure only for any drugs used within the past five years. Applicant's "no" answer was truthful as had stopped using drugs in 1985. Clearance is granted.

CASENO: 02-20128.h1

DATE: 04/29/2005

DATE: April 29, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-20128

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated security concerns over his minimal use of marijuana from 1997 to 1999 when he had access to classified information as he subsequently disclosed this use and made positive changes in his life style. He thus established his intent not to abuse any drugs in the future by his responsible conduct at work demonstrated by his excellent evaluations and references. Since he abstained from all other drug use since 1985, he also mitigated those concerns as his drug involvement has not been recent. While personal conduct concerns were alleged over his failure to detail this earlier drug use on a 1991 security form, that question on drug use required a disclosure only for any drugs used within the past five years. Applicant's "no" answer was truthful as had stopped using drugs in 1985. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on August 8, 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 Applicant. [\(1\)](#) The SOR alleges specific concerns over drug use (Guideline H) and personal conduct (Guideline E). Applicant responded to these SOR allegations in an Answer notarized on September 8, 2003, where he admitted all of the allegations and requested a decision without a hearing, but subsequently requested a hearing.

The case was assigned to Department Counsel who in September 2004, attested it was ready to proceed. The case was assigned to another judge in September 2004, but was reassigned to me on January 6, 2005. Subsequently, after a mutually convenient date for hearing was agreed to, a Notice of Hearing issued on January 7, 2005, set the matter for January 26, 2005, at a location near where Applicant works and lives.

At the hearing the Government offered six exhibits which were admitted into evidence. (Exhibits 1-6) Applicant testified along with two other witnesses and offered three exhibits which were admitted into evidence. (Exhibits A-C) The transcript (TR) was received on February 13, 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, 42 years old, has worked for a defense contractor (Contractor #1) in State #1 since July 1999. Applicant now works part-time. Applicant completed a Security Clearance Application (SF 86) in February 2002 as part of a periodic reinvestigation. In 1998 he was laid off by Contractor #1 and worked for Contractor #2. From 1997 to 1998 he worked for Contractor #1. Earlier, he had worked for Contractor #3 from 1991 to 1997; DoD had granted him a Secret security clearance in November 1991. (Exhibits 1, 2; TR 18; 49-50) Applicant received a BSEE degree from a university in State #1 in May 1991. Applicant married in 1985 and has two children born in 1991. (Exhibits 1, 2; TR 17-18; 48-49)

Drug Use and Personal Conduct

On his 2002 Security Clearance Application (SF 86) in response to Question 27 Applicant disclosed he used marijuana use 2 or 3 times from 1997 to December 2000; in response to Question 28 he also disclosed this earlier use (2 or 3 times from 1997 to December 2000) was done after he had been granted a security clearance. (Exhibit 2; TR 51)

In his initial Defense Security Service (DSS) interview and statement in March 2002, Applicant stated that he does not use marijuana habitually and does not purchase marijuana. However, he admitted that he did share one or two joints with friends after his security clearance was granted in 1991. In a second March 2002 interview with the DSS agent, Applicant admitted that, in fact, he had used marijuana one to three times a year with a family member. In addition, in response to the DSS agent's assertion that he must have falsified his 1991 security form, he conceded that he had failed to disclose his extensive earlier drug use on his initial security clearance request form in May 1991. He failed to disclose this information about his past drug use as the job market was limited and his two children had just been born, so he did not want to risk not getting that position. Later he did not know how to rectify this misdeed. On cross-examination Department Counsel focused on Question 24.b. in the May 1991 Questionnaire for Sensitive Positions as that question limited the requirement to disclose drug use within the past five years. As Applicant had not used drugs between May 1986 to May 1991, his "no" answer was truthful. (Exhibits 3, 4, 5, 6; TR 45-47; 53-57) On the 1991 form he had disclosed that in 1979 he was charged with being a minor in possession (of alcohol, not marijuana). (Exhibit 3; TR 58-59)

After confrontation by the DSS agent, Applicant disclosed that he began using marijuana at the age of 14 on a weekly or twice a week basis and would buy marijuana from acquaintances. He quit at age 15 for 6-9 months, but then began using marijuana again from ages 18 to 21; he used it two to three times a week and sometimes five to six times a week. From ages 22 to 24 he used marijuana once or twice a week. He would buy marijuana and at times spent \$20 per week. Also, he used cocaine 30-40 times from ages 18-20, smoked opium two to ten times, and took acid 50 to 60 times during the same period. He also smoked hashish, used speed and crystal meth; he also smoked either PCP or heroin once in 1982. He stopped using these illegal substances in 1985 after he married and changed his focus. He never was involved in a drug rehabilitation support group. (Exhibits 3, 4, 5, 6; TR 45-47; 52-53)

Applicant did not use drugs between 1985 to 1997; however, he used marijuana again two to three times from 1997 to 1998 or 1999 with family members when they offered marijuana to him. Although he stated on the security form he had used to December 2000, he later believed the time frame was earlier and his last use was in 1999. During this period he had a security clearance and knew drug use was inconsistent with DoD security policies. (TR 60-63; 64-66)

Applicant's wife who has a corporate position testified favorably for him and recommended he be granted a security clearance. (TR 24-25; 26-28)

Job Performance

Applicant's former government customer, who retired from his GS-13 position in February 2002 and who now is a colleague at Contractor #1, attested that he has known Applicant since 1992 and that the quality of his work is outstanding. Applicant is detail-oriented, honest, and has the respect of his peers. Applicant is still doing an outstanding job and has excellent decision-making skills. He recommended Applicant be granted a security clearance. (TR 20-38; 39-43)

A colleague who has know Applicant since 1994 stated that Applicant is a person of integrity and dedicated to the success of any program on which he has worked. (Exhibit A)

Another colleague who has know Applicant for seven years praised his work ethic, honesty and ethical standards. (Exhibit B)

Applicant was recommended for a \$2,000 achievement award in November 2004 and a \$1,000 achievement award in October 2003. (Exhibit C)

Applicant's Performance and Development Summary for 2003 documents that he did well and works well with people; he has good organizational skills. He also received favorable ratings for performance in earlier years. (Exhibit C)

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.

Guideline E - Personal Conduct

Conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

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

The Government established security concerns⁽²⁾ over Applicant's drug use and especially over his relapse and return to using marijuana after he had been granted access to classified information in 1991. He used marijuana from 1997 to 1999 while he held a security clearance. Applicant had an extensive history of drug use earlier in his life until he stopped using these illegal substances in 1985 after he married. While he had an arrest in 1979, it was not for marijuana possession as alleged, but for under age alcohol possession; thus, the Government did not establish allegation 1.g.

Clearly, Applicant mitigated⁽³⁾

security concerns over his drug use in the 1976 to 1985 period as that drug use was not recent. More troublesome is Applicant's return to marijuana use in the 1997 to 1999 period in light of his disregard of security policies which demonstrates poor judgment. On the other hand he has demonstrated through his professional references that he has reformed his conduct and now demonstrates good judgment. He disclosed this use on his 2002 security form in an effort to make amends for his misconduct. He also assures that he will not again use drugs while having access to classified information.

Applicant has excellent reference who attest to his good conduct and recommend him for a security clearance. One colleague at Contractor #1 who has known Applicant since 1992 recommended Applicant be granted a security clearance. He attested that the quality of Applicant's work is outstanding, and he has excellent decision-making skills. In addition, Applicant is detail-oriented, honest, and has the respect of his peers. Another colleague who has known Applicant since 1994 stated that Applicant is a person of integrity and dedicated to the success of any program on which he has worked. A third colleague who has known Applicant for seven years praised his work ethic, honesty and ethical standards. Further, Applicant has excellent performance evaluations; he was recommended for a \$2,000 achievement award in 2004 and a \$1,000 achievement award in 2003.

While SOR 1.b. raises serious concerns over his return to marijuana use from January 1997 to 1999 while he had a security clearance, he only used it two or three times during that period and has subsequently abstained. Thus, taking into account his excellent references at work, under Mitigating Condition (MC) 3, he has persuasively demonstrated an intent not to abuse any drugs in the future. Since there is no evidence that he has used the other drugs again since 1985, he has mitigated the earlier drug use under Mitigating Condition (MC) 1, as the drug use was not recent. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f. and 1.g. under SOR Paragraph 1.

Personal Conduct

Applicant admitted that he failed to reveal his earlier drug use on his 1991 security form. Applicant did not reveal his extensive past drug use until confronted at a DSS interview in 2002. Applicant's explanation was that he needed a job; this defense for his omission while understandable is not credible as he put his own interests in getting a job ahead of his duty to be honest. While his failure to disclose this earlier drug use led the Government to raise security concerns over personal conduct issues, the Government at the hearing conceded that they did not establish that he had falsified relevant and material facts ⁽⁴⁾

as Question 24.b. on the May 1991 Questionnaire for Sensitive Positions limited the requirement to disclose any drugs used within the past five years. Since Applicant had stopped all drug use in 1985, he had not used drugs between relevant period of May 1986 to May 1991. So, in fact, his "no" answer was truthful for that period. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 2.a. under SOR Paragraph 2.

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: 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 E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is 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. **Conditions that could raise a security concern and may be disqualifying include:** 1. Any drug abuse (see above definition).
3. **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.
4. **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;