

KEYWORD: Drugs; Personal Conduct

DIGEST: Applicant used marijuana from 1982 to 2001. He was arrested three times. He failed to list his marijuana usage or his arrests when he completed a security clearance questionnaire. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from his drug involvement but not his deliberate falsifications. Clearance is denied.

CASENO: 02-20596.h1

DATE: 02/16/2005

DATE: February 16, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-20596

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant used marijuana from 1982 to 2001. He was arrested three times. He failed to list his marijuana usage or his arrests when he completed a security clearance questionnaire. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from his drug involvement but not his deliberate falsifications. Clearance is denied.

STATEMENT OF THE CASE

On July 30, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding [\(U\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On July 27, 2003, Applicant's answer to the SOR and request for a hearing was received. On September 1, 2004, I was assigned the case. On September 22, 2004, I convened a hearing in this matter. On September 30, 2004, the transcript (tr.) of the hearing was received.

Department Counsel (DC) moved to amend the SOR, to conform to the evidence presented at the hearing. DC moved to amend paragraph 1.b. to read, " From 1996 to at least February 2000." (tr. 58) DC moved to add paragraph 2.b.2. to read, " On February 26, 1991, you were arrested by the Las Vegas Metropolitan Police Department for being under the influence of a controlled substance. You paid a fine." DC moved to amend the SOR to add paragraph 2.c, to read "You falsified material facts on a Security Clearance Application (SF 86) executed by you on October 9, 2001, when you responded to question 26, 'Your Police Record, Other Offenses. In the last seven years have you been arrested for, charged with, or convicted of any offenses not listed in modules 21, 22, 23, 24, or 25'. To which you answered "no" even though on December 6, 1996, you had been arrested by the Police Department, City of Killeen, Texas on suspicion of driving while intoxicated." There being no objection to the amendments, they were granted.

FINDINGS OF FACT

The SOR alleges Drugs Involvement and Personal Conduct. The Applicant admits to the following: he used marijuana from 1982 to 1992, he was arrested in 1988 and charged with possession of a controlled substance, he was arrested in 1996 for suspicion of Driving While Intoxicated (DWI), when he completed his Security Clearance Application, Standard Form (SF) 86, he failed to indicate his illegal drug usage or arrests. Those admissions are incorporated as findings of fact. After a thorough review of the whole record, I make the following additional findings of fact:

The Applicant is 39 years old, has worked as a photographer for a defense contractor since March 2001 and is seeking a security clearance. The Applicant is regarded by those who know him as a reliable, trustworthy professional; a committed partner, loving son, supportive brother, and caring friend. He has received excellent work ratings, certificates, letters and coins of appreciation. (App Ex A)

In 1982, Applicant--then in the 11th grade--first used marijuana. In high school and college he smoked marijuana once or twice a month until 1992 when he quit. He stopped because his warehouse job required drug testing. In 1996, he started using again and continued until February 2001. During the more recent period of use, he used marijuana once or twice a month. He has not used marijuana since getting his current job and has no intention of ever using it again. Applicant stated he had reached a point in his life where he needed to stop doing negative things. (Tr. 49) Applicant no longer associates with those individuals with which he used marijuana. In 1987 or 1988, Applicant got Valium from a friend of his college roommate. His total use of Valium was limited to two or three occasions. He found his Valium use to be very detrimental to his well being. (Gov Ex 2)

In November 1988, Applicant was intoxicated and taken into custody for public intoxication. A search discovered Valium and Applicant was charged with possession of a controlled substance. The charge was dismissed when the arresting officer failed to appear at the court date.

In February 1991, Applicant was arrested for being under the influence of a controlled substance. He was in a car where marijuana was being smoked when the car was stopped by the police. He paid a fine. In February 1994, he was arrested after getting into an argument and breaking his girlfriend's windshield. Although he did not appear in court, he paid a fine, court costs, and made restitution. In July 1995, he received a citation for disorderly conduct noise. He paid a \$170 fine. In December 1996, Applicant was detained for the suspicion of DWI after being stopped for speeding. He was released when his breathalyzer results were .60% and the state minimum for DWI was .80%. He was unaware he had actually been arrested in 1996 until so informed during a May 2002 Defense Security Service interview.

In October 1991, Applicant completed his SF 86. He answered "no" to question 27, which asked him if he had used illegal drugs since age 16 or during the previous seven years. He also answered "no" to question 24, which asked him about arrests related to alcohol or drug offenses. He answered "no" to question 26, which asked him if during the prior seven years he had been arrested for, charged with, or convicted of any offense not previously listed. He intentionally falsified his SF 86 because he felt his past transgressions were of minimal security significance. Additionally, he

through his most recent transgression was outside the time being considered for his investigation. He now realizes his errors and realizes the seriousness and importance of filling out the forms correctly and honestly. (Tr. 55)

At the time he completed his SF 86 he understood he needed to fill it out correctly, but at that point in his life, he was more concerned with having gainful employment and did not believe anyone would find out about his drug usage or arrests. (Tr. 47)

Applicant is an active runner and is active in his church and in Weigh Watchers through which he has lost 50 pounds.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline H, Drug Involvement. Under Guideline H, the security eligibility of an applicant is placed into question when that applicant is involved with illegal drugs. From 1996 through February 2001, Applicant used marijuana once or twice a month. He used un-prescribed Valium two or three times in 1988. Also in 1988 he was charged with possession of a controlled substance (Valium). Disqualifying Condition (DC) 1 (E2.A8.1.2.1. Any drug abuse.) applies.

Applicant last used marijuana in February 2001, just before he started his employment with a defense company. He started using marijuana in 1982 while in high school. He stopped using in 1992 because his job required drug testing. He resumed using in 1996 and continued until February 2001. He has not used marijuana since obtaining his current job. His last usage occurred more than three and a half years ago and is, therefore, not recent. Mitigating Condition (MC) 1. (E2.A8.1.3.1. The drug involvement was not recent.) applies.

Applicant stated he had reached a point in his life where he needed to stop doing negative things. Applicant no longer associates with those individuals with which he used marijuana. He has no intention of using it again. MC 3. (E2.A8.1.3.4. A demonstrated intent not to abuse any drugs in the future.) applies. I find for Applicant as to Drug Involvement.

The Government has satisfied its initial burden of proof under guideline E, (Personal Conduct). Under Guideline E, the security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal conduct which creates doubt about the person's judgment, reliability, and trustworthiness. Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate and meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. The nature of Applicant's actions, in providing false information to multiple questions on his October 2001 SF 86 poses a serious potential risk to the nation's security precautions.

At the time he completed his SF 86 he understood he needed to fill it out correctly, but at that point in his life he was more concerned with having gainful employment and did not believe anyone would find out about his drug usage or arrests. Additionally, he believed his past transgressions were of minimal security significance and were outside the time being considered for his investigation.

Applicant started using marijuana in 1982 and used it until February 2001. He did not reveal his usage on his October 2001 SF 86. I find against Applicant as to SOR 2.a. In 1988, he was arrested for possession of a controlled substance (Valium). The charge was dismissed. In 1991, he was arrested for being under the influence of a controlled substance and paid a fine. He failed to listed these arrests on his SF 86. I find against Applicant as to SOR 2.b.

Applicant knew the truth, but was more worried about getting the job than telling the truth. Because of the serious nature of his falsifications, I find against the Applicant as to Personal Conduct, SOR subparagraph 3.

In 1996, Applicant was arrested on the suspicion of DWI, but was released without charges when he tested below the legal limit. If an individual is stopped by the police and taken to the station it should be revealed on an SF 86. Applicant knew he had been stopped and that charges were dropped, however he was unaware he had actually been arrested in 1996 until so informed during a May 2002 Defense Security Service interview. Not knowing he had been arrested his failure to reveal it was not a deliberate falsification. I find for Applicant as to SOR 2.c.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Drug Involvement: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Paragraph 2 Personal Conduct: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: For the 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.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.

