

KEYWORD: Drugs; Alcohol; Personal Conduct; Criminal Conduct

DIGEST: Applicant has mitigated alcohol abuse that occurred many years ago and there is no indication of a recent problem. However, he has failed to mitigate his use of marijuana over a 22 year period, including after submitting his security clearance application (SF 86). Moreover, Applicant has failed to mitigate his falsifications concerning his drug use not only on his SF 86 but to DSS investigators on two occasions. Clearance is denied.

CASENO: 02-22423.h1

DATE: 08/30/2004

DATE: August 30, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 02-22423

**DECISION OF ADMINISTRATIVE JUDGE**

**ROGER E. WILLMETH**

## **APPEARANCES**

### **FOR GOVERNMENT**

Catherine M. Engstrom, Department Counsel

### **FOR APPLICANT**

Jeffrey J. Plum, Esq.

## **SYNOPSIS**

Applicant has mitigated alcohol abuse that occurred many years ago and there is no indication of a recent problem. However, he has failed to mitigate his use of marijuana over a 22 year period, including after submitting his security clearance application (SF 86). Moreover, Applicant has failed to mitigate his falsifications concerning his drug use not only on his SF 86 but to DSS investigators on two occasions. Clearance is denied.

## **STATEMENT OF THE CASE**

On October 15, 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), Guideline E (Personal Conduct), and Guideline J (Criminal 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 31, 2003, Applicant responded to the SOR and requested a decision on the record in lieu of a hearing. On December 2, 2003, Applicant requested a hearing. The case was assigned to me on January 8, 2004. A notice of hearing

was issued on January 26, 2004 and the hearing was held on February 11, 2004. During the hearing, six Government exhibits (Govt Ex), seven Applicant exhibits (Ap Ex), and the testimony of four Applicant witnesses, including Applicant, were received. The transcript (Tr) was received on February 24, 2004.

## FINDINGS OF FACT

Having thoroughly considered the evidence in the record, including Applicant's admissions to all the allegations,<sup>(3)</sup> I make the following findings of fact:

Applicant is a 40-year-old test driver of military vehicles employed by a defense contractor. His employer rates him as a skilled and valued employee. Applicant is seeking a security clearance.

From 1981 until 1995, Applicant used marijuana as often as twice per month. From 1995 until July 2000, he used marijuana no more than once or twice per year (SOR ¶ 1.a, 4.a).

From September 1982 until September 1985, Applicant served on active duty with the United States Army. During his military service, he held a security clearance. On one occasion, Applicant was caught with alcoholic beverages in his barracks room. He was required to attend an alcohol and drug education class (SOR ¶ 2.c).

From September 1982 and March 1990, Applicant consumed alcohol on a daily basis. On some occasions, he drank to the point he passed out (SOR ¶ 2.b).

From 1983 until 1984, Applicant used hashish as often as twice per month (SOR ¶ 1.b, 4.a). Between 1988 and 1990, Applicant used cocaine on at least two occasions (SOR ¶ 1.c, 4.a).

On March 30, 1990, Applicant was involved in an automobile accident. He was charged with Speeding, Negligent Driving, and Driving Under the Influence (DUI), after being administered a breathalyzer. On September 19, 1990,

Applicant plead guilty to Negligent Driving, was convicted of that offense, fined, and placed on probation for two years (SOR ¶ 2.a, 4.b).

Since his driving conviction, Applicant has substantially reduced his consumption of alcohol. Between March 1990 and March 2002, he drank to the point of intoxication approximately once per year (SOR ¶ 2.d).

In May 1998, funds were removed from Applicant's delivery truck. Applicant was required to reimburse his employer \$600.00 (SOR ¶ 3.d).

In October 1998, Applicant adulterated his urine sample on a random drug test with a substance containing pyridine, a drug masking agent. As a result of the adulterated urine sample, Applicant was involuntarily terminated by his employer (SOR ¶ 3.c).

On February 14, 2001, Applicant executed a security clearance application (SF 86). In response to question 27, <sup>(4)</sup> Applicant answered, "no," and deliberately failed to report his use of marijuana (SOR ¶ 3.a, 4.c).

On March 18, 2002, Applicant was interviewed by an investigator for the Defense Security Service (DSS). Applicant provided a sworn statement in which he deliberately falsified material facts by denying he had taken any illegal drugs, to include marijuana, within the past seven years (SOR ¶ 3.b, 4.c).

On June 10, 2002, Applicant provided a sworn statement to a DSS investigator. Applicant admitted he lied to a DSS investigator on March 18, 2002, by denying any illegal drug use within the past seven years (SOR ¶ 3.b, 4.c). He admitted using marijuana at a friend's birthday party in July 2000. Applicant further stated, "I do not intend to use any illegal drug in the future."

In July 2003, Applicant used marijuana at the birthday party for the same friend at whose birthday party he had used marijuana in July 2000.

In January 2004, Applicant voluntarily submitted to an evaluation by an outpatient substance abuse treatment service. He underwent tests for drugs and alcohol that were negative. Applicant was enrolled in a 12 hour alcohol and drug education program.

## 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. 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).

### 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 raise a security concern and may be disqualifying under Guideline E also include E2.A5.1.2.3 (Disqualifying Condition 3). Disqualifying Condition 3 covers 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 trustworthiness determination.

### Guideline J: Criminal Conduct

The concern under Guideline J is a history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. Conditions that could raise a security concern and may be disqualifying under Guideline J include E2.A10.1.2.1, allegations or admission of criminal conduct, regardless of whether the person was formally charged (Disqualifying Condition 1).

Conditions that could mitigate security concerns include E2.A10.1.3.1, the criminal behavior was not recent (Mitigating Condition 1). They also include E2.A10.1.3.2, the crime was an isolated incident (Mitigating Condition 2), and E2.A10.1.3.6, there is clear evidence of successful rehabilitation (Mitigating Condition 6).

## CONCLUSIONS

### Guideline H: Drug Involvement

Applicant's admitted drug use, including the use of marijuana over a 22 year period and as recently as last year, raises Disqualifying Condition 1. Although Applicant insists he will not continue his use of marijuana, the record does not support a demonstrated intent not to abuse any drug in the future. After having used marijuana the year before he submitted his SF 86 in this case, Applicant told a DSS investigator he had no intention of doing so again. A year later, however, Applicant used marijuana again. His actions not only do not demonstrate an intent not to abuse any drug in the future but suggest just the opposite. Therefore, I find against Applicant with regard to SOR ¶ 1.

### Guideline G: Alcohol Consumption

Applicant's DUI and admitted history of alcohol abuse are the type of alcohol-related incident away from work addressed by Disqualifying Condition 1. However, the DUI occurred over 14 years ago and the evidence of record indicates Applicant has substantially reduced his consumption of alcohol since that offense. Because the drinking problem occurred so many years ago and there is no indication of any recent problem, in accordance with Mitigating Condition 2, I find in favor of Applicant with regard to SOR ¶ 2.

### Guideline E: Personal Conduct

Although Applicant's employer required him to reimburse \$600.00 for funds that were stolen from his delivery truck in May 1998, the record fails to establish he intentionally or negligently failed to safeguard the funds. Therefore, I find in favor of Applicant with regard to SOR ¶ 3.d.

However, Applicant's admitted deliberate omission of his drug abuse from the SF 86 supports Disqualifying Condition 2 (SOR ¶ 3.a). His denial of such use to a DSS investigator in March 2002 supports Disqualifying Condition 3 (SOR ¶ 3.b). Moreover, he continued to lie to a DSS investigator in June 2002, when he denied responsibility for the adulterating agent in his urine sample in October 1998 (SOR ¶ 3.c). Tr at 34-35.

Applicant asks to be excused for these recent and repeated failures but the record provides no basis for doing so. Unfortunately, he did not admit his lies promptly and before being confronted with the facts. The extent of Applicant's lies with respect to his pending security clearance application raise serious security concerns that he has failed to mitigate. Therefore, I find against Applicant with regard to SOR ¶ 3.

#### Guideline J: Criminal Conduct

Applicant's only alcohol-related offense was not recent, occurring more than 14 years ago. However, it is not an isolated incident of his criminal behavior. His recent false statements to investigators and on his SF 86 in connection with his pending application for a security clearance constitute violations of 18 U.S.C. 1001. Although his recent use of marijuana may be limited, it also constitutes a violation of both federal and state law. Applicant's admissions of these acts supports Disqualifying Condition 1. Given the recent nature of his falsification offenses, the record does not afford clear evidence of successful rehabilitation. Therefore, I find against Applicant with regard to SOR ¶ 4.

### 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

#### Paragraph 2. Guideline G: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: For Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Subparagraph 3.b: Against Applicant

Subparagraph 3.c: Against Applicant

Subparagraph 3.d: For Applicant

Paragraph 4. Guideline J: AGAINST APPLICANT

Subparagraph 4.a: Against Applicant

Subparagraph 4.b: Against Applicant

Subparagraph 4.c: Against Applicant

## **DECISION**

In light of the evidence of record 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. Applicant only took exception to his breathalyzer being alleged as .09, maintaining it was .04 (SOR ¶ 2.a, 4.b).
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?"