

KEYWORD: Drugs; Personal Conduct; Criminal Conduct

DIGEST: Applicant abused cocaine from approximately the age of 21 to June 2001. He also abused marijuana, with varying frequency, as a youth to June 2001. Applicant is now 32 years old. He falsified information on his security clearance application by denying any drug use. Applicant's inability to recognize the importance of truthfulness and honesty is paramount. He has failed to meet the ultimate burden of persuasion. Clearance is denied.

CASENO: 02-26076.h1

DATE: 09/30/2004

DATE: September 30, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-26076

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant abused cocaine from approximately the age of 21 to June 2001. He also abused marijuana, with varying frequency, as a youth to June 2001. Applicant is now 32 years old. He falsified information on his security clearance application by denying any drug use. Applicant's inability to recognize the importance of truthfulness and honesty is paramount. He has failed to meet the ultimate burden of persuasion. Clearance is denied.

STATEMENT OF THE CASE

On January 23, 2004 the Department of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline H for drug involvement, Guideline E for personal conduct, and Guideline J for criminal conduct.

In sworn answers, dated June 28, 2002, February 23, 2004 and April 1, 2004, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the government's case on July 7, 2004. A complete copy of the file of relevant material (FORM) was provided to Applicant on July 12, 2004, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. No additional information was submitted. The case was assigned to me on September 16, 2004.

FINDINGS OF FACT

Applicant has admitted the factual allegations pertaining to Guideline H, subparagraphs 1.a. and 1.b., and denied the

factual allegation in 1.c. Applicant has admitted the factual allegation pertaining to Guideline E, subparagraph 2.a. Applicant was non-responsive to the factual allegation pertaining to Guideline J, subparagraph 3.a., however Applicant's admission in subparagraph 2.a. corresponds to the conduct in subparagraph 3.a. Those admissions are incorporated herein as findings of fact.

After a complete and thorough review of the record evidence as a whole, I find it sufficient to establish, by substantial evidence, the occurrence of the factual events alleged in SOR paragraphs 1.a., 1.b., 1.c., 2.a. and 3.a. I make the following additional findings of fact:

Applicant is a 32-year-old employee of a defense contractor. He was married in 1993, divorced in 2000, and remarried in June 2001. He has one child born in 2002. Applicant served in the Army National Guard for four years from 1990 to 1994 and was honorably discharged.

Applicant completed a course of study from September 1995 to April 2000 at a vocational/technical/trade school. He earned his electrician's license in April 2000. He was employed by a defense contractor as an electrician from 1994 to 2000. He has been employed since September 2000 as an electronics technician with his current employer. Applicant has never held a security clearance.

Applicant used cocaine from the age of 21 until June 2001, when he was 29 years old. His cocaine use was approximately five times. He has also used marijuana with varying frequency from his youth to June 2001. Applicant purchased drugs once in the past seven years. He bought one-quarter of an ounce of marijuana from a friend. Applicant does not intend to use illegal drugs in the future.

Applicant submitted a security clearance application (SF 86) on May 2, 2002, in which he answered "No" to Question 27: *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, narcotic (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics, (LSD, PCP, etc.), or prescription drugs?* Applicant was interviewed by a special agent of the Defense Security Service (DSS) on June 28, 2002, and he provided a written, signed, and sworn-to statement admitting he used both cocaine and marijuana. He also admits to purchasing marijuana. Applicant also admits he falsified the information on his SF 86.

Applicant denies in the SOR and in his answer of February 23, 2004, that he has ever purchased drugs. Both statements are in direct conflict with his sworn statement of June 28, 2002, where he admits that he purchased 1/4 of an ounce of marijuana from a friend one time in the past seven years. Applicant claims he never intended to falsify the requested information and he did not realize the importance of being honest instead of being embarrassed. Applicant lied about never purchasing drugs. He lied in his SF 86, in his February 23, 2004 answer, and in his response to the SOR.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are Disqualifying Conditions (DC) and Mitigating Conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, Guideline H, pertaining to drugs, Guidelines E, pertaining to personal conduct, and Guideline J pertaining to criminal conduct, with their respective DC and MC, are most relevant in this case.

Under Guideline H, illegal drug involvement may raise a security concern based on the improper and illegal involvement with drugs. Improper or illegal involvement with drugs is relevant to the security clearance process for several reasons: (1) drug abuse indicates an unwillingness or inability to abide by the law; (2) drug abuse weakens judgment; (3) some types of drug use reflect a tendency toward irresponsible or high risk behavior; (4) users of illegal drugs may be susceptible to blackmail, especially if exposure of drug use could cost them their job; (5) drug abuse or dependence often indicates the presence of broad emotional or personality problems that are security concerns; or (6) drug use may cause financial problems, leading to criminal activity to finance a drug habit.

Personal Conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Personal 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.

Under Guideline J, criminal conduct is a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. Willingness to abide by rules is an essential qualification for eligibility for access to the Nation's secrets. A history of illegal behavior indicates an individual may be inclined to break, disregard, or fail to comply with regulations, practices, or procedures concerning safeguarding and handling classified information.

BURDEN OF PROOF

The sole purpose of a trustworthiness determination is to decide if it is clearly consistent with the national interest for an applicant to be granted eligibility to hold a position requiring such trust. The government has the burden of proving controverted facts. The burden of proof is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.

The clearly consistent standard indicates that trustworthiness determinations should err, if they must, on the side of denials. Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.

CONCLUSIONS

Applicant used marijuana with varying frequency as a youth and an adult. His cocaine use was confined to his adult life, with the latest use, as a 30-year-old man, in June 2001. During the past seven years he purchased drugs once from a friend. Disqualifying Condition (DC) 1: *Any drug abuse*; and DC 2: *Illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution* apply in this case.

Addressing mitigating conditions, under Guideline H, MC 1: *The drug involvement was not recent*, and MC 3: *A demonstrated intent not to abuse any drugs in the future* apply in Applicant's favor. Applicant's last involvement with drugs was three years ago. Applicant is happily married and has a young son. He has focused his life on the responsibilities of being a husband and a father. Under the circumstances presented I find Applicant has mitigated the security concern caused by his drug abuse, and Guideline H is decided for Applicant.

Applicant failed to disclose his drug history when he submitted his SF 86. Applicant made contradictory statements in his written statements. Under Guideline E, DC 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 qualification, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*, applies in this case.

Applicant admits the information he provided on his SF 86 regarding his drug history was false. Applicant's first justification for falsifying the SF 86 is that he did not think a positive response was necessary if he had used drugs in the past seven years and he was embarrassed. The obvious purpose of Question 27 was to determine if the Applicant had used drugs and if the use was recent. Applicant knew he had used drugs as late as June 2001 and had purchased drugs within the seven year limit.

Applicant's second justification is that he did not understand the importance of being honest when he provided the requested information. SF 86 provides a certification by the person completing the form stating: *My statement on this form, and any attachments to it, are true, complete and correct to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both.* (2) The SF 86 clearly informed Applicant of the possible consequences for making a knowing and willful false statement. Despite having been so warned, Applicant deliberately failed to disclose his drug history. Obviously the importance of being honest is paramount when determining if a person can be trusted to properly safeguard classified information. When embarrassment outweighs truthfulness it could indicate a lack of concern for properly safeguarding classified information.

I have specifically considered MC 2: *The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;* and MC 3: *The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts* and conclude neither apply. Applicant disclosed his drug history when confronted and interviewed by DSS. In addition, Applicant's subsequent statement of February 23, 2004, and his reply to the SOR contradicts his statement to DSS in that he adamantly denies what he previously admitted regarding purchasing drugs. Applicant's deliberate omissions compounded by his contradictory statements and lack of appreciation for the importance of being honest is a security concern, and Guidelines E is decided against Applicant.

Applicant admits violating federal law, Title 18, United States Code, Section 1001, by falsifying information on his SF 86. Under Guideline J, DC 1: *Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;* and DC 2: *A single serious crime or multiple lesser offenses,* apply in this case. Applicant swore to the truth of his statement, under penalty of law, when he knew parts of the statement were false. This offense goes to the heart of trustworthiness, an important character trait required for ensuring our national security. I do not find any mitigating condition applies under Guideline J and it is accordingly decided against the Applicant.

Considering all relevant and material facts and circumstances present here, the whole person concept, the applicable disqualifying and mitigating conditions, and other appropriate factors and guidelines in the Directive, allegations 1.a., 1.b. and 1.c. of the SOR are decided for the Applicant. Allegation 2.a. and 3.a. of the SOR are decided against the Applicant. I find that Applicant has failed to overcome the case against him and satisfy his ultimate burden of persuasion. It is not clearly consistent with the national interest to grant Applicant a security clearance.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline H FOR THE APPLICANT

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Paragraph 2. Guideline E AGAINST THE APPLICANT

Subparagraph 2.a. Against the Applicant

Paragraph 3. Guideline J AGAINST THE APPLICANT

Subparagraph 3.a. Against 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 Applicant. Clearance is denied

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Title 18, United States Code, Section 1001.