

KEYWORD: Drugs

DIGEST: Applicant abused several different controlled dangerous substances during his senior year in high school and throughout college between March 1995 and November 2000. Recognizing that illegal drug use could jeopardize his career as an engineer, Applicant resolved to cease all illegal drug use before he graduated from college. While his spouse and friends continued to use marijuana in his presence to 2003, Applicant's spouse is no longer involved with the drug and neither he nor his spouse continues to associate with individuals who use illegal drugs. Clearance is granted.

CASENO: 03-19238.h1

DATE: 02/22/2005

DATE: February 22, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-19238

**DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant abused several different controlled dangerous substances during his senior year in high school and throughout college between March 1995 and November 2000. Recognizing that illegal drug use could jeopardize his career as an engineer, Applicant resolved to cease all illegal drug use before he graduated from college. While his spouse and friends continued to use marijuana in his presence to 2003, Applicant's spouse is no longer involved with the drug and neither he nor his spouse continues to associate with individuals who use illegal drugs. Clearance is granted.

**STATEMENT OF CASE**

On May 10, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. [\(1\)](#) DOHA recommended referral to an administrative judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on drug involvement (Guideline H).

On June 2, 2004, Applicant filed his response to the SOR allegations and requested a hearing. The case was assigned to me on July 22, 2004, and pursuant to notice of August 3, 2004, a hearing was held on August 18, 2004, Applicant having waived the 15-day notice requirement. At the hearing, two government exhibits and two Applicant exhibits were entered into the record and testimony was taken from Applicant, as reflected in a transcript received on September 7, 2004.

## FINDINGS OF FACT

The government alleged as security disqualifying that Applicant used and purchased marijuana from about March 1995 to November 2000, and that his spouse and several friends continued to use marijuana in his presence. Drug involvement concerns were also alleged because Applicant used opium once in January 2000, used ecstasy once in January 1998, took prescription cough medicine containing codeine prescribed for another in May 1997, used LSD about six times from 1996 to April 2000 and purchased the drug, used hallucinogenic mushrooms about six times from 1995 to 1999 and purchased the drug, and inhaled nitrous oxide on several occasions (not specified as to time). In his Answer, Applicant admitted using and purchasing the drugs as specified, but denied his spouse and friends continued to smoke marijuana in his presence. Applicant's admissions are accepted and incorporated as findings of fact. After a complete and thorough review of the evidence, I make the following additional findings:

Applicant is a 27-year-old mechanical engineer who has been employed by a defense contractor since May 2001. He seeks a secret-level security clearance for his duties.

During the last semester of his senior year at a college preparatory school, Applicant began using illegal drugs. About once to twice per month from March 1995 until he graduated in June 1995, Applicant smoked marijuana at parties, and he also grew two marijuana plants at a friend's home for personal use. He also inhaled nitrous oxide for the "high." In the summer before college, Applicant refrained from any illegal drug use.

In September 1995, Applicant commenced undergraduate studies in engineering at a technological university. As a freshman, he used marijuana on weekends, and tried psilocybin (psychedelic mushrooms). The frequency of his involvement with marijuana increased during his freshman year as he was more interested in socializing with his peers than studying. That summer, he returned home and his marijuana use continued, albeit at a reduced frequency of once a month or less.

Once back at college in fall 1996, Applicant resumed his illegal drug involvement. An average student, he took a year off from his studies after his sophomore year and worked as a temporary employee for the university's dining services. With a renewed commitment to his academics, Applicant resumed his engineering studies in September 1998, and he eventually earned his bachelor's degree in mechanical engineering in December 2000.

Over the course of his college career, with illegal drugs prevalent in his social circle, Applicant smoked marijuana with varying frequency, at times daily but also abstaining for several months at times. Applicant purchased marijuana frequently for his personal consumption. He also used LSD an estimated five or six times between his first involvement in March 1996 and his last use in April 2000, tried opium once in January 2000 when it was placed on top of marijuana,

ingested psilocybin six times at parties to a last use in July 1999, tried ecstasy once in January 1998 which made him ill, inhaled nitrous oxide several times through his junior year, and once in May 1997 ingested some cough syrup with codeine that had been prescribed for a college friend. Applicant estimates he spent between \$100 and \$150 for the psilocybin and \$50 for the LSD.

In November 2000, Applicant decided to stop using illegal drugs as he realized his future career as an engineer could be jeopardized by drug use since many companies subjected employees to drug testing. After he earned his degree, he joined his fiancée in their present locale. She had graduated from the same university in May 2000 and had started working. Aware Applicant had stopped using illegal drugs, she continued to smoke marijuana.

After passing a drug test, Applicant began working for his current employer, a defense contractor, as a mechanical engineer/thermal analyst in May 2001. He was informed by his employer that illegal drug use was against Department of Defense and/or company policy. On May 14, 2001, he completed a security clearance application (SF 86), disclosing his involvement with illegal drugs between March 1995 and November 2000. That September, Applicant and his fiancée married. She continued to smoke marijuana about twice a month with her friends, on occasion in Applicant's presence or in their home. Applicant never felt pressured to smoke the drug on those occasions. He felt that as an adult she should be free to make her own choices and he did not consider the impact of her use on him or his job.

On March 26, 2003, Applicant was interviewed by a special agent of the Defense Security Service (DSS). Candid about his illegal drug involvement and continuing association with marijuana users, Applicant indicated he could not estimate the frequency of his marijuana in college other than there were times when he smoked it daily and times when he abstained for several months. He admitted he enjoyed the social circumstances and activities that were conducive to marijuana use. He attributed his use of opium, ecstasy, prescription cough syrup, and LSD to curiosity, but also acknowledged being attracted to having psilocybin-induced hallucinatory experiences in college. Applicant denied any drug use since November 2000 or intent to use any illegal drug in the future, but indicated that his spouse and several friends continued to use marijuana in his presence, including on occasion in his home. In respect for his wishes to remain drug free, no pressure was being placed on him to smoke marijuana.

In June 2003, Applicant's spouse completed her master's degree. She stopped using marijuana at that point as they considered starting a family and it would be incompatible with her career as a teacher. Since September 2003, Applicant's spouse has been employed as a teacher in a private school educating students from middle school through high school.

Since summer 2003 Applicant and his spouse have not seen the individuals with whom his spouse smoked marijuana in recent years. Neither Applicant nor his spouse intends to use any illegal drug in the future. Applicant understands he showed poor judgment by "implicitly condon[ing] an illegal activity" when he allowed his spouse and her friends to smoke marijuana in his home.

Applicant has proven to be a productive employee for the defense contractor. Applicant showed a good understanding of thermal analysis methods, and earned the highest rating ("far exceeds requirements") for his overall performance in 2002. He continued to show excellent potential for growth and advancement in 2003 and his performance was rated as "exceeds requirements."

## **POLICIES**

"[N]o one has a 'right' to a security clearance." *Department of the Navy V. Egan*, 484 U.S. 518, 528 (1988). 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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

## **CONCLUSIONS**

Having considered the evidence of record in light of the appropriate legal precepts and adjudicative guidelines, and having assessed the credibility of the Applicant, I conclude the government established its case under guideline H, but the Applicant has mitigated the concerns by his abstinence from illegal drugs since November 2000, his intent to not use

such illicit substances in the future, and the absence of any threat to that resolve since summer 2003.

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. Applicant used marijuana with varying frequency in college, at times as often as daily, having been introduced to the drug as a senior in high school. With illegal drug use prevalent among his college peers, Applicant also tried several dangerous drugs, such as opium and ecstasy only once, but he used the hallucinogens LSD and psilocybin up to six times each. He purchased marijuana for his personal consumption and spent between \$100 and \$150 on psilocybin and \$50 on LSD. Disqualifying conditions a. *Any drug abuse*, and b. *Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*, of guideline H must be considered in evaluating Applicant's security suitability.

In Applicant's favor, he stopped using drugs just before he graduated from college, as he realized drug use could adversely affect his employment prospects. He took a pre-employment drug test for the defense contractor that was negative for all substances tested. There is no evidence of any illegal drug involvement on his part since November 2000. Mitigating condition a., *The drug involvement was not recent*, applies in his favor, despite the fact that he continued to condone the use of marijuana by his spouse and her friends, on occasion in his presence, to as recently as June 2003. Whereas there is no evidence that Applicant engaged in drug abuse as defined in the Directive ("the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction") or possessed it on those occasions, his conduct does not rise to the level of drug involvement. However, he clearly exercised extremely poor judgment by not only condoning illegal activity, but also by increasing the risk of passive inhalation or even relapse into active smoking by being in the presence of others using drugs on occasion.

Yet, the past year has brought positive changes which lead me to conclude that Applicant is not likely to relapse into drug abuse. His spouse stopped using marijuana in June 2003 when she finished graduate school as she recognized it was inconsistent with her career as a teacher and they began thinking of having children. Applicant testified that neither he nor his spouse knowingly associates with any individuals who use illegal drugs. His spouse has not socialized with those friends with whom she used marijuana in the past since summer 2003. Given Applicant's record of candor throughout the investigation and adjudication of his clearance about the extent of his past drug involvement and his spouse's continued use until June 2003, I do not doubt his testimony that illegal drugs are no longer a part of their lives. Mitigating condition c. *A demonstrated intent not to abuse any drugs in the future*, applies. SOR subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.i., 1.j., and 1.k. are resolved in his favor.

## FORMAL FINDINGS

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

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

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: For the Applicant

Subparagraph 1.i.: For the Applicant

Subparagraph 1.j.: For the Applicant

Subparagraph 1.k.: For the 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 Applicant.

**Elizabeth M. Matchinski**

**Administrative Judge**

1. The SOR was issued under the authority of Executive Order 10865 (as amended by Executive Orders 10909, 11328,

and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4).