

KEYWORD: Drugs; Personal Conduct

DIGEST: Applicant abused a variety of controlled substances while in college. He failed to disclose the full extent of his drug use in a security clearance application he submitted to another government agency in June 2000. Applicant has mitigated the security concerns raised by his use of controlled substances that ended in 1999, and by the falsification of a security clearance application in 2000. Clearance is granted.

CASENO: 03-19244.h1

DATE: 01/24/2005

DATE: January 24, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-19244

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant abused a variety of controlled substances while in college. He failed to disclose the full extent of his drug use in a security clearance application he submitted to another government agency in June 2000. Applicant has mitigated the security concerns raised by his use of controlled substances that ended in 1999, and by the falsification of a security clearance application in 2000. Clearance is granted.

STATEMENT OF THE CASE

On May 7, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline H for drug involvement, and Guideline E for personal conduct. Applicant submitted a sworn answer to the SOR that was received by DOHA on June 17, 2004, requested a hearing, and admitted all SOR allegations.

This case was assigned to me on September 15, 2004. A notice of hearing was issued on November 4, 2004, scheduling the hearing for December 1, 2004. The hearing was conducted as scheduled. The government submitted four documentary exhibits that were marked as Government Exhibits (GE) 1-4, and admitted into the record without objection. Applicant testified, called four witnesses to testify on his behalf, and submitted eight documentary exhibits that were marked AE 1-8, and admitted into the record without objection. The transcript was received on December 9, 2004.

FINDINGS OF FACT

Applicants' admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 25 years old, has been married since May 2003, and his wife is due to have their first child in January 2005. Applicant attended a private college as a student-athlete on a scholarship from August 1997 until he graduated in May 2001 with a bachelor of science degree in electrical engineering. He has been employed by a defense contractor as an engineer since August 2001. Applicant has been pursuing a master of science degree in electrical and computer engineering while working full-time, and was scheduled to be awarded that degree in mid-December 2004.

Applicant began abusing controlled substances in approximately November 1995, when he first used marijuana. He was 16 years old at that time. Over the next four years he used marijuana about 40-50 times, ritalin four times, nitrous oxide about 10 times, ecstasy about 10-15 times, and LSD one time. During this time period, Applicant occasionally purchased or contributed to the purchase of marijuana, nitrous oxide, ecstasy, and LSD. He also purchased psychedelic mushrooms for \$20.00 that he intended to use until he learned they had been grown in manure. Opting not to use them, Applicant split the mushrooms into two parcels and resold them to friends for a \$10.00 profit.

Applicant acted as a middleman in the sale of ecstasy on one occasion sometime between September 1998 and September 1999. On that occasion, a friend gave him five pills that he delivered to another friend in exchange for \$100.00. The money was then given to the first friend, but Applicant did not receive anything of value for his part in the transaction.

In January 1998, campus police were notified of the smell of burning marijuana coming from a room in which Applicant and others were smoking. Applicant and the other participants lied to the police and denied Applicant was involved in order to protect him from losing his scholarship. In the fall of 1998, Applicant designed and manufactured fake driver's licenses and sold them for a profit. ⁽²⁾

Applicant interned with a government agency while still in college, and was offered a full-time position after graduation, conditioned on him being granted a security clearance with sensitive compartment information (SCI) access. He submitted a security clearance application (SF 86) on June 8, 2000, and failed to disclose the full extent of his abuse of controlled substances. While he did list his use of marijuana, ecstasy, and LSD, he minimized that use, and failed to disclose the use of the other controlled substances. He also did not disclose the occasion when he acted as a middleman in a drug sale or the time he resold the mushrooms for a \$10.00 profit. Applicant's application for a security clearance was denied, and he was denied employment with the government agency.

Applicant has learned from his past mistakes, and is clearly not the person today that he was when he abused drugs in college or submitted the falsified SF 86 in 2000. He presented the testimony of the director of spiritual development at the college he attended who has known Applicant since September 2002. Applicant, who had never been baptized into any religion, contacted that person to arrange to go through a spiritual process that is known as the Right of Christian Initiation of Adults (RCIA) in order to be baptized in the Catholic Church. Applicant met with this man on a regular basis over the following year, completed the program, received the various sacraments, and became a practicing Catholic.

That same individual is on the faculty of the college in the psychology department, working on his Ph.D., and has developed an expertise in substance abuse counseling for adolescents and college students. Based on his experience, he opined that it is not atypical for scholar-athletes to abuse drugs while in college as part of the permissive culture they find themselves in. He further testified that based on his observations of, and meetings with, Applicant he did not see anything that would indicate to him that Applicant continued to abuse drugs after college. He described Applicant as a thoughtful, kind, smart, and good person.

The president of Applicant's employer, who is also the facility security officer, testified that he hired Applicant in July 2001, and has known him professionally since then. Applicant disclosed his prior drug use, SF 86 falsification, and loss of employment when he was hired. His testimony, along with various documents admitted into evidence, establishes that Applicant is a valued employee who has excelled in his job. There is no adverse information contained in Applicant's personnel file, with the obvious exception of the matters herein at issue. He believes Applicant is trustworthy and not a security threat.

Applicant's father-in-law works as the director of fraud detection for a government agency. He has known Applicant since high school and considers him to be a respected individual who is trustworthy and possessed of high integrity. He also believes Applicant does not present a security concern.

Applicant submitted an SF 86 in December 2002 in which he fully disclosed his history of drug abuse and being denied a security clearance. He provided a detailed statement to a representative from the Defense Investigative Service on January 24, 2003 in which he fully discussed his use, purchase, and sale of drugs, and being denied a security clearance.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. 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 drug involvement, and Guideline E, pertaining to personal conduct, with their respective DC and MC, are most relevant in this case.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽³⁾ The government has the burden of proving controverted facts.⁽⁴⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence⁽⁵⁾, although the government is required to present substantial evidence to meet its burden of proof.⁽⁶⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁷⁾ 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.⁽⁸⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

No one has a right to a security clearance⁽¹⁰⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹¹⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹²⁾

CONCLUSIONS

Under Guideline H, illegal drug involvement raises questions about an individual's willingness or ability to protect classified information. Involvement with or use of an illegal drug indicates unwillingness or inability to abide by the law. Cleared employees must respect regulations whether they agree with them or not. If they do not respect the rules on illegal substances, they may not respect the rules designed to protect classified information.

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.

Applicant used, purchased, and on a couple of occasions even sold a variety of controlled substances between 1995, when he was 16 years old, and 1999, when he was a 20-year-old college student. He lied about his drug use to a campus police officer in 1998, and in a June 2000 SF 86 he submitted. In the fall of 1998, he designed, manufactured, and sold fake drivers' licenses. As a result of his misdeeds, he was denied a security clearance and lost a job with another government agency.

Under Guideline H, Disqualifying Conditions (DC) 1: *Any drug abuse*; and DC 2: *Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution* apply. Under Guideline E, DC 2: *The deliberate omission, concealment, or falsification of relevant and material facts from any personal 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*; DC 4: *Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail*; and DC 5: *A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency* apply.

The evidence overwhelmingly establishes that Applicant's misdeeds were all the product of youthful indiscretion. There comes a time when college follies should no longer be held against a person in deciding whether or not they may be permitted access to the nation's secrets. That time is when, by his or her actions, the individual has proven themselves to be a mature and respected member of society who has earned an unassailable reputation for honesty and trustworthiness. Applicant, has shown by his work and academic success, through the testimony of his witnesses, and by the documents he submitted that he is such a person.

Under Guideline H, Mitigating Conditions (MC) 1: *The drug involvement was not recent*; MC 2: *The drug involvement was an isolated or aberrational event*; [\(13\)](#) and MC 3: *A demonstrated intent not to abuse drugs in the future* apply. Under Guideline E, MC 2: *The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*; and MC 5: *The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress* apply.

In all adjudications the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Considering all relevant and material facts and circumstances present in this case, including Applicant's character references, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has overcome the case against him and satisfied his ultimate burden of persuasion. Guidelines H and E are decided for Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline H: For the Applicant

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

Subparagraph f: For the Applicant

Subparagraph g: For the Applicant

Subparagraph h: For the Applicant

SOR ¶ 2-Guideline E: For the Applicant

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: 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. Clearance is granted.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. The only support in the record for this allegation, is Applicant's admission, so no further information about the circumstances is available.
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
5. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
6. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
7. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
8. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
9. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
10. *Egan*, 484 U.S. at 528, 531.

11. Id at 531.

12. *Egan*, Executive Order 10865, and the Directive.

13. I am granting Applicant some limited consideration under this mitigating condition because, although the abuse covered a number of years, it was for the most part isolated to a relatively limited time period when he found himself in the "scholar-athlete" culture wherein his witness testified that Applicant's conduct was not atypical.