

KEYWORD: Drugs; Personal Conduct

DIGEST: Applicant is a senior computer applications engineer for a defense contractor. She retired from active military service and held a security clearance while on active duty. She admits to using marijuana and cocaine while holding a security clearance. She was denied access to special compartmented information by a government agency as the result of an investigation and three polygraphs concerning her drug involvement. She did not mention her drug involvement in response to questions on her security clearance application. She has not yet detailed the full extent of her drug involvement. Clearance is denied.

CASENO: 03-19636.h1

DATE: 03/21/2005

DATE: March 21, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-19636

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Jason R. Perry, Esq., Department Counsel

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a senior computer applications engineer for a defense contractor. She retired from active military service and held a security clearance while on active duty. She admits to using marijuana and cocaine while holding a security clearance. She was denied access to special compartmented information by a government agency as the result of an investigation and three polygraphs concerning her drug involvement. She did not mention her drug involvement in response to questions on her security clearance application. She has not yet detailed the full extent of her drug involvement. Clearance is denied.

STATEMENT OF THE CASE

On April 22, 2004, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR May 5, 2005. The SOR alleges security concerns under Guideline H (Drug Involvement), and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on June 15, 2004. She admitted all the allegations under Guidelines H and E. She requested a hearing before an administrative judge. The request for a hearing was received by DOHA on June 16, 2004. Department Counsel was prepared to proceed with the case on December 3, 2004, and the case was assigned to me on December 8, 2004. A notice of hearing was issued on February 9, 2005 and the hearing was held on March 3, 2005. Seven government exhibits, six Applicant exhibits, and the testimony of the Applicant and three Applicant witnesses were received during the hearing. The transcript was received on March 11, 2005.

FINDINGS OF FACT

Applicant is a 40-year-old senior computer applications engineer for a defense contractor. She is a college graduate working on her master's degree. She retired from active military duty after 18 years of service. She had a security clearance on active duty.

Applicant used marijuana on occasion as a teenager from 1979 to 1982. She used marijuana on occasion from 1982 to 1999 while an adult and on active military duty. Applicant and her husband used marijuana shortly after both retired from active military duty. Applicant used cocaine one time in 1987.⁽¹⁾ Applicant used marijuana and cocaine while holding a security clearance.⁽²⁾

Applicant submitted a security clearance application on October 3, 2000 and signed the application again on January 11, 2001. She responded "NO" to question 27 asking if since age 16 or in the last 7 years she illegally used any controlled substance. She also responded "NO" to question 28 asking if she ever used a controlled substance while possessing a security clearance.⁽³⁾ Applicant also submitted a statement to an agent of the Defense Security Service on April 3, 2002, that she has not used illegal substances since she held a security clearance.⁽⁴⁾ Applicant knew the impact that drug use would have on her security clearance and also the requirement to provide correct information on the application and to security investigators. She subsequently admitted to the use of controlled substances in the last 7 years and while possessing a security clearance.⁽⁵⁾

Prior to working for the defense contractor, Applicant worked for a United States government agency which required her to possess access to special compartmented information. Applicant was questioned three times by security agents using a polygraph. On each occasion, she expanded or modified her explanation of drug involvement. She admitted she and her husband used drugs and that her husband may still use drugs. Applicant was denied access to compartmented information based on the results of the investigation and the polygraphs.⁽⁶⁾

Applicant has letters of appreciation and commendation attesting to her good performance on active military duty and as a civilian. She submitted information on military awards she received.⁽⁷⁾ Applicant also presented letters of reference from co-workers and supervisors concerning her good character.⁽⁸⁾ Two witnesses testified as to Applicant's good character. Applicant submitted laboratory results from her medical records showing illegal drugs were not detected in her body on the dates tests were taken.⁽⁹⁾ Applicant and her husband both testified at the hearing concerning Applicant's character and use of illegal drugs. They did admit to some drug abuse but their testimony was evasive, vague and not credible about the frequency of illegal drug use.

POLICIES

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."⁽¹⁰⁾ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.⁽¹¹⁾

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽¹²⁾ An administrative judge should consider: (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 applicant'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 of recurrence.⁽¹³⁾

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.⁽¹⁴⁾ 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.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.⁽¹⁵⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁽¹⁶⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽¹⁷⁾ "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability."⁽¹⁸⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽¹⁹⁾

Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation

of the facts in this case:

Guideline H - Drug Involvement: A security concern exists because the 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.

Guideline E - Personal Conduct: A security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions section below.

CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR:

The government has established its case under Guideline H. Applicant's use of marijuana and cocaine brings the matter under Drug Involvement disqualifying condition Directive ¶ E2.A8.1.2.2 (*any drug abuse*). Marijuana and cocaine are illegal drugs. Applicant admits to the use of marijuana occasionally from 1979 to 1999. She admits to using cocaine one time in 1987.

The Drug Involvement mitigating conditions to consider for Applicant are Directive ¶ E2.A8.1.3.1 (*the drug involvement was not recent*); Directive ¶ E2.A8.1.3.2 (*the drug involvement was an isolated or aberrational event*); and Directive ¶ E2.A8.1.3.3 (*a demonstrated intent not to abuse any drugs in the future*). Applicant admits to using drugs only until 1999, over 5 years ago. She admits to using cocaine one time but admits to using marijuana a number of times. The only information on present or future drug use was Applicant's statement she does not use drugs now and does not intent to use drugs in the future. Since her testimony was vague, evasive and not credible, she has not established the drug use was not recent and she has not demonstrated an intent not to use drugs in the future. She admitted to the use of marijuana over a period of time so the use was not isolated or aberrational. I conclude Applicant

has not mitigated the concerns over her drug involvement.

The government has established its case under Guideline E. Applicant's use of drugs while holding a security clearance, false answers to questions on the security clearance application, and false answers to security investigators brings the matter under Personal Conduct Disqualifying Conditions Directive ¶ E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from the personnel security questionnaire, personal history, or similar form used to conduct investigation. . .*); Directive ¶ E2.A5.1.2.3 (*deliberately providing false and misleading information concerning relevant and material matters to an investigator in connection with a personnel security or trustworthiness determination*); and Directive ¶ E2.A5.1.2.5 (*a pattern of dishonesty or rules violations. . .*). She admits to using drugs while possessing a security clearance. She admits to falsely answering questions on her security clearance application concerning her drug use. She admits to falsely telling security investigators about her drug involvement. She was denied access to special compartmented information because she provided false information to another government agency about her drug involvement. Her testimony at her hearing was not credible as to the extent of her drug use. Applicant knew of the importance of the security clearance application to be granted a security clearance. She knew the impact drug use would have on being granted a clearance. Applicant knows how drug use will affect security clearance determination and has a history of not telling the truth to investigators about her drug involvement. She deliberately did not tell the truth with the intent to deceive the government about granting her a security clearance.

The Personal Conduct Mitigating Conditions that may apply to Applicant are Directive ¶ E2.A5.1.3.2 (*the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*); and Directive ¶ E2.A5.1.3.3 (*the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*). Applicant has yet to tell the full story of her drug involvement, even when provided the opportunity to do so at her hearing. She has not volunteered the true information on her drug involvement and she has not made a good-faith effort to correct any falsifications. I conclude Applicant has not mitigated security concerns under Guideline E.

I carefully considered all of the circumstances in light of the "whole person" concept to reach a fair, impartial, and commonsense decision. I conclude Applicant is not eligible for access to classified information.

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: AGAINST APPLICANT

Subparagraph 1. a: Against Applicant

Subparagraph 1. b: Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2. a: Against Applicant

Subparagraph 2. b: Against Applicant

Subparagraph 2. c: Against Applicant

Subparagraph 2. d: Against Applicant

DECISION

In light of all of the circumstances presented in 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.

Thomas M. Crean
Administrative Judge

1. Tr. 61-65; Tr. 85-86.
2. Tr. 65-69; Tr. 87.
3. Government exhibit 1 (Security clearance application, dated Oct. 3, 2000), at 8.
4. Government exhibit 2 (Statement, dated Apr. 3, 2002), at 1.
5. Tr. 76-86.
6. Government exhibit 5 (Clearance status, dated Nov. 3, 2004); Government exhibit 3 (Notice of denial, dated Nov. 22, 2002) at 4-7.
7. Applicant exhibit E (18 letters and certificates).
8. Applicant exhibit D (20 letters of recommendation).
9. Applicant exhibit F (Various laboratory test results).
10. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
11. Directive ¶ E2.2.1.
12. *Id.*
13. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
14. *See* Exec. Or. 10865 § 7.
15. Directive ¶ E3.1.14.
16. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
17. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
18. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
19. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.