

KEYWORD: Drugs; Personal Conduct

DIGEST: This 38-year-old employee of a defense contractor used cocaine on an average of two or three times a month between May 2000 and July 2003. He tested positive for cocaine a company random drug test in May 2002 and participated in a rehabilitation program. He used cocaine at least two more times after ay 2002, with his last use in July 2003. He lied about his drug use on his security clearance application and in his first interview with an agent of the Defense Security Service (DSS). Mitigation has not been shown. Clearance is denied.

CASENO: 03-20452.h1

DATE: 5/09/2005

DATE: May 9, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-20452

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

This 38-year-old employee of a defense contractor used cocaine on an average of two or three times a month between May 2000 and July 2003. He tested positive for cocaine a company random drug test in May 2002 and participated in a rehabilitation program. He used cocaine at least two more times after May 2002, with his last use in July 2003. He lied about his drug use on his security clearance application and in his first interview with an agent of the Defense Security Service (DSS). Mitigation has not been shown. Clearance is denied.

STATEMENT OF THE CASE

On May 25, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On July 27, 2004, Applicant submitted responses to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge on the written record, i.e, without a hearing. A File of Relevant Materials (FORM) was issued on August 31, 2004, in which Applicant was advised to file any response within 30 days of receipt of the FORM. Any such response was due by October 10, 2004, but no new submission was received by DOHA. The matter was assigned to me on November 1, 2004.

FINDINGS OF FACT

Applicant is a 38-year-old employee of a defense contractor. He first obtained a DoD security clearance in 1985 (Item 4). The SOR contains three allegations under Guideline H (Drug Involvement), 1.a., 1.b., and 1.c., and two allegations under Guideline E (Personal Conduct), 2.a and 2.b. Applicant admits all three allegations, with an explanation. The admissions are incorporated herein as Findings of Fact.

After considering the totality of the evidence found in the FORM, I make the following additional FINDINGS OF FACT as to each SOR allegation:

Guideline H (Drug Involvement).

1.a. - Applicant used cocaine approximately two to three times per month from about May 2000 to about May 2002, and again in November 2002 and July 2003. His drug use began after his separation from his wife in 2000 and mostly ended after he tested positive for cocaine after a random drug test at work in April 2002 (Item 6).

1.b. - On or about April 5, 2002, Applicant tested positive for cocaine during a random drug screening. He was suspended from work for two weeks and ordered to complete a drug rehabilitation program. He used cocaine twice more after his positive drug test.

1.c. - From about April 25, 2002 to at least August 2003, Applicant attended an Alcohol and drug recovery program in State A. He participated in weekly sessions. He was rated as having a high probability of substance dependency. He used cocaine twice more during the treatment period.

Applicant used cocaine of two more occasions after April 2002, in November 2002 and in May 2003 (Item 6, sworn statement of August 11, 2003). As of the last date, he was living with a girlfriend who had used drugs and who, he believed, was continuing to do so, but not in his presence.

Guideline E (Personal Conduct)

2.a. - Applicant falsified material facts on a Security Clearance Application (SF 86), dated October 22, 2001 when, in response to Question "**27 - Your Use of Illegal Drugs and Drug Activity** - Since age 16 or in the last seven years, whichever is shorter," he deliberately failed to disclose that he had used cocaine, as set forth in SOR 1.a., above.

2.b. - Applicant falsified relevant and material information about his drug use in an interview with a DSS agent on March 25, 2002, when he denied any drug use.

POLICIES

Each adjudicative decision must include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

CONCLUSIONS

The concern under Guideline H is that the improper or illegal involvement with drug raises questions about an individual's willingness or ability to protect classified information. The rationale is that drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

My decision is made on the evidence of record at the present time. The SOR is based primarily on information found in Applicant's Security Clearance Application (SF 86) of November 8, 2002 (Item 4). I have carefully considered the SF 86 and Applicant's responses to the SOR. There is no response to the FORM.

SOR 1.b. - Accepting Applicant's figures, he used cocaine somewhere between 60 and 100 times between May 2000 and July 2003.

Accepting Applicant's explanations at face value, the drug use cited in the SOR began after he "walked away from [his] family . . . because I was becoming depressed about what I thought was me losing my identity" (Item 3). The overall record suggests an emotionally troubled man. He admits the hole he dug for himself, the effect on his family, especially his daughter, and his career. He claims rehabilitation in ending his drug abuse and in rebuilding his career and family relationships (*Id.*).

His situation as of July 23, 2004 is highlighted by the letter from Mr. L, Applicant's Operations Manager (Attachment to Item 3). Mr. L was aware of Applicant's problems with drugs as a result of the random drug test in April 2002. He has seen Applicant pursue rehabilitation and has been impressed enough to give Applicant increasing responsibility within the company, to the point where Applicant was made a "team leader in offshore operations" (*Id.*).

As positive as Mr. L's letter is, Applicant's pattern of conduct still raise questions about his ability to avoid a relapse into

past behavior. The concerns are based on a series of factors:

- * 60 - 100 uses of cocaine over a three-year period ending only in July 2003.

- * continued use after the negative drug test in April 2002.

- * continued use after enrolling on a drug recovery program in April 2002.

- * continued use after obtaining a security clearance in 1985.

- * the recovery program rated him as having a high probability of substance dependency.

- * living with a girlfriend who, he believes, continues to abuse drugs.

- * lack of any professional positive diagnosis.

Disqualifying Conditions (1) any drug abuse and (2) illegal drug possession are applicable, but none of the possible mitigating conditions have been established by the record.

Guideline E (Personal Conduct)

Second only to an actual violation of the rules for protecting classified information or material, lying about material

facts on a security clearance application or to an agent of the Defense Security Service (DSS) agent goes most directly to the heart of the industrial security program. Simply put, someone who cannot be trusted to tell the truth in such cases cannot be trusted to protect the nation's secrets.

Applicant lied on both his SF 86 and to the DSS agent during the first interview when he denied any drug abuse (Items 4 and 5). His sole explanation is that he was in a state of "depression" and that it was only during the second interview with the DSS agent that he decided to tell the truth (Item 6). These claims do not come close to mitigating the negative impact of his falsifications on both occasions.

Disqualifying Conditions (2) deliberate omission, concealment, or falsification of material and material facts from any personnel security questionnaire and (3) deliberately providing false or misleading information concerning relevant and material matters to an investigator are clearly established. At the same time, none of the possible mitigating conditions are established by the record.

In summary, even while accepting Applicant's statements as to his intentions and state of mind, he has a questionable track record of controlling his drug use and of telling the truth. Considering the scale of his drug use over a 38-month period, and the two "relapses," it is simply too soon to have any degree of confidence in his ability remain drug free. Likewise, the two falsifications make it difficult to accept his present claims of eligibility. Under the Directive, Applicant has the ultimate burden of demonstrating his eligibility to hold a security clearance. He has not adequately mitigated the negative aspects of his past behavior under either Guideline.

FORMAL FINDINGS

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

Guideline H (Drug Involvement) Against the Applicant

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant.

Subparagraph 1.c. Against the Applicant

Guideline E (Personal Conduct) Against the Applicant

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. 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.

BARRY M. SAX

ADMINISTRATIVE JUDGE