

KEYWORD: Drugs; Personal Conduct; Criminal Conduct

DIGEST: Between 1970 and February 2001, Applicant frequently used marijuana, while holding various security clearances. Between 1988 and June 2003, Applicant failed to disclose her purchase and use of illegal drugs when she completed six security clearance questionnaires, during three interviews, and in one sworn statement. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from her illegal drug use, falsifications, personal conduct, and criminal conduct. Clearance is denied.

CASENO: 03-21546.h1

DATE: 08/31/2005

DATE: August 31 ,2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-21546

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Between 1970 and February 2001, Applicant frequently used marijuana, while holding various security clearances. Between 1988 and June 2003, Applicant failed to disclose her purchase and use of illegal drugs when she completed six security clearance questionnaires, during three interviews, and in one sworn statement. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from her illegal drug use, falsifications, personal conduct, and criminal conduct. Clearance is denied.

STATEMENT OF THE CASE

On December 20, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding ⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant due to drug involvement, personal conduct, and criminal conduct security concern. On February 4, 2005, Applicant answered the SOR and elected to have her case decided on the written record in lieu of a hearing.

On June 21, 2005, Applicant received a complete copy of the government's file of relevant material (FORM) dated June 7, 2005. Applicant was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. On July 21, 2005, Applicant's response to the FORM was due. No response has been received. On August 1, 2005, I was assigned the case.

FINDINGS OF FACT

The SOR alleges significant drug involvement, personal conduct, and criminal conduct. In her response to the SOR, Applicant states: she used illegal drugs from 1970 to 1992. She admits purchasing marijuana once or twice in the 1980s. As a teenager, while in high school, she purchased and used amphetamines once or twice; used hashish; and purchased and used LSD. She admits purchasing and using cocaine as a young adult in the 1980s. She admits using PCP two or three times in early 1979. In 1988, she used heroin, but was unaware she was using it when she did so. Only later did she learn it was heroin. She denies using any illegal drugs after April 13, 1992, the day after her mother died. When Applicant completed numerous security questionnaires and in interviews, she failed to reveal her purchase and use of illegal drugs. She failed to list her illegal drug usage on: a November 1988 Personnel Security Questionnaire (PSQ); during a February 1989 interview; a September 1989 PSQ; a May 1993 National Agency Questionnaire (NAQ); a November 1993 NAQ; during a March 1994 interview; an August 2000; security clearance application, Standard Form (SF) 86; and a September 2001 SF 86. These admissions are incorporated herein as findings of fact. After thorough review of the whole record, I make the following additional findings of fact:

Applicant is 47 years old, has worked as a network specialist for a defense contractor since July 1999, and is seeking to obtain security clearance. Applicant has previously held numerous security clearances. In March 1986, Applicant received a top secret clearance; in August 1988, sensitive compartmented information (SCI) access; in May 1990, a top secret clearance; in April 1994 a secret clearance; in July 1999, she was granted a secret clearance; and in August 1999, she was granted a top secret clearance.

In Applicant's June 2003 sworn statement to a Defense Security Service (DSS) Special Agent (Item 10), she listed some of her drug use. In 1975, Applicant started using illegal drugs in high school and continued to use illegal drugs until April 1992. While in high school, she tried "speed" about five times, which she had purchased, and used LSD once in 1976. In her sworn statement, Applicant stated she used marijuana, which she purchased, twice a month until 1980, when her first child was born. She swore her last use of marijuana was in 1984 or 1985. She estimates she used marijuana about 150 times, and denies she said she had used 5,000 times, an amount she admitted during a January 2001 security clearance interview when she faced her first polygraph. From 1975 to 1977, she used hashish.

In her sworn statement, Applicant says she used cocaine about twice a year in 1976 and 1977. In 1985, Applicant first used crack cocaine at a party with her then boyfriend. From 1985 to 1987, she and her then boy friend used crack cocaine about once or twice a month. (Item 10, page 3) From 1985 to 1987, she used PCP three times. In 1987, she stopped seeing the man with whom she had been using illegal drugs.

Applicant remained away from illegal drugs for approximately a year until she began dating another man. She began using crack cocaine with this man once or twice a month. She was spending \$50 once or twice a month on cocaine. In 1988 or 1989, she used heroin two times. In April 1992, the day following her mother's death from cancer, Applicant used crack cocaine. In 1994, she moved to a new location which distanced herself and her family from illegal drug activity. She has no intention of using illegal drugs in the future.

In 2001, after being confronted by a National Security Agency (NSA) investigator, Applicant finally admitted her involvement with illegal drugs. In December 2001, Applicant was denied SCI access. (Item 11) Applicant had previously been granted top secret clearances three times, secret security access twice, and SCI access once. Applicant made a statement prior to completing her first polygraph examination. During a January 2001 security interview she stated she had used marijuana 5,000 between 1970 and 1995. She admitted purchasing marijuana during the same period 50 times paying as much as \$25 per ounce. She admitted using crack cocaine 50 times from 1990 to 1992, and purchasing it 50 times with the largest purchase being \$100. In the early 1980s, she used cocaine 30 times. In April 2001, during a subsequent security interview, she admitted using marijuana in February 2001, following her January 2001 interview, because she did not think there would be a second interview. She knew smoking marijuana was wrong, but did so because a friend asked her to smoke. Applicant admitted to "sporadic use between 1990 and 1995, during which time she purchased marijuana about fifty times." (Item 11)

She used illegal drugs even after obtaining clearances and SCI access. In December 1988, Applicant completed a PSQ and answered "No" to question 18.a, which asked if she has ever used stimulants, hallucinogens (to include LSD and PCP) and cannabis. She also answered "No" to question 18.b, which asked if she had ever illegal purchases or possessed any stimulant, hallucinogen, or cannabis. She certified her entries on the form were true, complete, and accurate. In September 1998, she completed a PSQ again answering "No" to questions 18.a and 18.b and certifying her answers were true. In May 1993, Applicant completed a NAQ and answered "No" to question 20.a, which asked if she had ever tried or used any narcotic (to include cocaine), stimulant, hallucinogen (to include LSD or PCP), or cannabis (to include marijuana or hashish). She answered "No" to question 20.b, which asked if she had purchased any stimulant, hallucinogen, or cannabis. She certified her answers were true and correct. In November 1993, she completed a PSQ and answered "No" to question 22.a, which asked if she had ever tried or used any narcotic (to include cocaine), stimulant, hallucinogen (to include LSD or PCP), or cannabis (to include marijuana or hashish). She answered "No" to question 22.b, which asked if she had purchased any stimulant, hallucinogen, or cannabis. She certified her answers were true and correct.

In August 2000, she completed an SF 86 and answered "No" to question 27, which asked since the age of 16 or in the last 7 years, whichever was shorter, had she illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics, amphetamines, hallucinogenic (LSD, PCP, etc.) or prescription drugs. She answered "No" to question 28, which asked her if she ever used a controlled substance while possessing a security clearance. In September 2001, Applicant completed an SF 86 and again answered "No" to questions 27 and 28. On both her SF 86s, she certified her answers were true and correct.

She never disclosed her illegal drug usage to any government investigator because she was ashamed of her activities and was afraid she would lose her job if she admitted using illegal drugs.

(Item 10, page 6)

POLICIES

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each 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 Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guidelines to be applied here are Guideline H (drug involvement), Guideline E (personal conduct), and Guideline J (criminal conduct).

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. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case 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. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. [\(2\)](#)

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information to be resolved in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline H, drug involvement. Under Guideline H, the security eligibility of an applicant is placed into question when that applicant is involved with illegal drugs. The improper or illegal involvement with drugs raises questions regarding an applicant'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. Directive E.2.A.8.1.1. From 1970 through February 2001, Applicant used marijuana frequently, between a minimum of 150 and possibly up to 5,000 times. Between 1990 and 1995, she purchased marijuana about 50 times. Between 1990 and 1992, she purchased and used crack cocaine 50 times, and in the early 1980's used regular cocaine 30 times. She has also illegally used LSD, PCP, speed, and heroin. Disqualifying Condition (DC) 1 (E2.A8.1.2.1. *Any drug abuse*) applies.

None of the Mitigating Condition apply to her marijuana use. MC 1 (E2.A8.1.3.1. *The drug involvement was not recent*) does not apply because her last marijuana use occurred in February 2001, which is recent. However, some of her other illegal drug usage was not recent and I find for her as to her purchase and use of speed, hashish, LSD, PCP, and heroin. Her last cocaine use followed her mother's death in 1992 and is not recent because it occurred more than 13 years ago. MC 2 (E2.A8.1.3.2. *The drug involvement was an isolated or aberrational event*) does not apply because she used a variety of illegal drugs over a thirty-year period. She states she will not use illegal drugs in the future. I find MC 3 (E2.A8.1.3.3. *A demonstrated intent not to abuse any drugs in the future*) does not apply because I question Applicant's veracity. On numerous security questionnaires she swore she was telling the truth and providing true and correct information, when in fact she was lying. She lacks credibility. I find against Applicant as to Drug Involvement.

The Government has satisfied its initial burden of proof under guideline E, (personal conduct). Under Guideline E, the security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal conduct which creates doubt about the person's judgment, reliability, and trustworthiness. Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate and meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. The nature of Applicant's actions, in providing false information to multiple questions on her November 1988 PSQ, February 1998 interview, September 1989 PSQ, May 1993 NAQ, November 1993 NAQ, March 1994 interview, August 2000 SF 86, September 2001 SF 86, October 2001 interview, and in her June 2003 sworn statement provides concern. Applicant admitted the falsifications to her security questionnaire and in interviews between 1988 and September 2001. She qualified her admission stating her last use of illegal drugs occurred in 1992. Her numerous falsifications pose a serious potential risk to the nation's security precautions.

Personal conduct 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. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance or in other official matters is a security concern. Here Applicant deliberately, knowingly and willfully provided numerous false answers over a long period of time because she was ashamed of her activities and afraid she would lose her job if she admitted using illegal drugs.

None of the mitigating conditions apply to her false answers. Her illegal drug purchase and usage were pertinent to a determination of judgment, trustworthiness, or reliability. The falsifications were not an isolated incident because she gave false answers on two PSQs, two NAQs, two SF 86, during three interviews, and on a sworn statement. Her false answers were given over a 14-year period. There is no showing Applicant made a prompt, good-faith effort to correct

the falsification before being confronted with the facts. Only when facing a polygraph examination did she reveal her illegal drug usage. There is no indication her omissions were caused by improper or inadequate advice from authorized personnel or based on advice from legal counsel. Because of the serious nature of her falsifications and no applicable mitigating conditions, I find against Applicant as to personal conduct, SOR subparagraph 2.

The Government has satisfied its initial burden of proof under Guideline J, criminal conduct. Under Guideline J, the security eligibility of an applicant is placed into question when that applicant is shown to have a history or pattern of criminal activity creating doubt about her judgment, reliability, and trustworthiness. Applicant provided false information on six security questionnaires, in three interviews, and in one sworn statement. She certified her answers on the questionnaire were true, complete, and accurate. She knew any knowing and willful false statement could be punished by fine or imprisonment or both under U.S. Code, Title 18, Section 1001. She used illegal drugs when holding security clearances. Because of this conduct, DC 1 (E2.A10.1.2.1. *Allegations or admission of criminal conduct, regardless of whether the person was formally charged*) and 2. (E2.A10.1.2.2. *A single serious crime or multiple lesser offenses*) apply.

None of the mitigating conditions (MC) apply to the criminal conduct. MC 1 (E2.A10.1.3.1. *The criminal behavior is not recent*) does not apply because her most recent falsification occurred in June 2003, which is recent criminal behavior. MC 2. (E2.A10.1.3.2. *The crime was an isolated incident*) does not apply because her falsifications were on six questionnaires, three interviews and on one sworn statement. Her criminal behavior was not an isolated incident. MC 3 (E2.A10.1.3.3. *The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life*) and MC 4 (E2.A10.1.3.4. *The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur*) do not apply because Applicant's conduct was not the result of pressure, coercion, or an involuntary act. There was no acquittal, so MC 5 (E2.A10.1.3.5. *Acquittal*) is inapplicable. C 6 (E2.A10.1.3.6. *There is clear evidence of successful rehabilitation*) does not apply because the record does not establish clear evidence of successful rehabilitation. I find against Applicant as to criminal conduct, SOR subparagraph 3.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

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

Paragraph 1 Drug Involvement: AGAINST the Applicant

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against 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

Subparagraph 1.l.: For the Applicant

Subparagraph 1.m.: Against the Applicant

Paragraph 2 Personal Conduct: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against the Applicant

Subparagraph 2.d.: Against the Applicant

Subparagraph 2.e.: Against the Applicant

Subparagraph 2.f.: Against the Applicant

Subparagraph 2.g.: Against the Applicant

Subparagraph 2.h.: Against the Applicant

Subparagraph 2.i.: Against the Applicant

Subparagraph 2.j.: Against the Applicant

Subparagraph 2.k.: Against the Applicant

Subparagraph 2.l.: Against the Applicant

Subparagraph 2.m.: Against the Applicant

Subparagraph 2.n.: Against the Applicant

Paragraph 3 Criminal Conduct: 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.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.

2. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15