

KEYWORD: Drugs; Personal Conduct; Criminal Conduct

DIGEST: Applicant regularly used marijuana from 1969 through November 2004. He used methamphetamines from 1992 to at least 2001, and admits providing and selling drugs to personal acquaintances from about 1985 until 1996, when he was arrested and convicted of certain drug-related criminal charges. He also failed to file state and federal income tax returns for 2001 and 2002. With the exception of his criminal conviction in 1996, he did not disclose his personal drug involvement and failure to file tax returns on his Security Clearance Application (SF 86), and he did not disclose the full extent of his drug activities to a Defense Security Service (DSS) investigator almost three years later. Applicant failed to mitigate the security concerns raised by his drug involvement, and personal and criminal conduct. Clearance is denied.

CASENO: 03-21982.h1

DATE: 01/31/2006

DATE: January 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-21982

DECISION OF ADMINISTRATIVE JUDGE

DAVID S. BRUCE

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant regularly used marijuana from 1969 through November 2004. He used methamphetamines from 1992 to at least 2001, and admits providing and selling drugs to personal acquaintances from about 1985 until 1996, when he was arrested and convicted of certain drug-related criminal charges. He also failed to file state and federal income tax returns for 2001 and 2002. With the exception of his criminal conviction in 1996, he did not disclose his personal drug involvement and failure to file tax returns on his Security Clearance Application (SF 86), and he did not disclose the full extent of his drug activities to a Defense Security Service (DSS) investigator almost three years later. Applicant failed to mitigate the security concerns raised by his drug involvement, and personal and criminal conduct. Clearance is denied.

STATEMENT OF THE CASE

On December 10, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Review Program*, dated January 2, 1992, as amended and modified (Directive), issued a Statement of Reasons (SOR) to Applicant alleging facts that raise security concerns addressed in the Directive under Guideline H - Drug Involvement, Guideline E - Personal Conduct, and Guideline J - Criminal Conduct. The SOR detailed why DOHA could not preliminarily determine under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's request for a security clearance. By his response to the SOR filed January 24, 2005, Applicant responded to the SOR allegations, and requested a hearing before an administrative judge.

The case was assigned to me on October 5, 2005, and I conducted the hearing on October 26, 2005. At the beginning of the hearing, to correct a typographical omission, Department Counsel moved to amend subparagraph 1.d. of the of the SOR, without objection from Applicant, by adding "1996 and in 2001" at the end of the text. The government submitted exhibits (GE) 1 through 9, which were admitted without objection. Applicant testified at the hearing along with one other witness, and offered exhibits (AE) A through C, also admitted without objection. DOHA received the hearing transcript (Tr.) on November 9, 2005.

FINDINGS OF FACT

Applicant's admissions to the allegations of the SOR are incorporated herein by reference. In addition, after a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact:

Applicant is 55 years old and has never been married. He attended college from 1969 until 1972, but never received a degree. ⁽¹⁾ He served in the U.S. Navy from ay 1973 until March 1982. He was honorably discharged at paygrade E-5. ⁽²⁾ Applicant held clearances while serving in the Navy and while employed by a federal contractor following his military service. ⁽³⁾

Applicant was employed by a federal contractor as a functional analyst from March 1982 until October 2003, when his employer's contract expired. ⁽⁴⁾ Applicant routinely handled classified information as a part of his responsibilities in working for the company for 21 years. ⁽⁵⁾ He was hired thereafter to his present position with another defense contractor as a hardware technician. He is highly regarded by his supervisors at work and is generally considered reliable, trustworthy and dependable, and an outstanding employee. ⁽⁶⁾

Applicant used marijuana regularly from 1969 through November 2004, varying in frequency from about one to three times per month. ⁽⁷⁾ He last purchased marijuana in October 2004. ⁽⁸⁾ Applicant used methamphetamines from 1985 through 1996, approximately two times per month, and again in 2001. He purchased methamphetamines for personal use at least through 1988. ⁽⁹⁾ Applicant admits using cocaine at least twice per month from 1985-1988, and using LSD while in college in the early 1970's. He sold illegal drugs to certain third parties from about 1985 until 1996. ⁽¹⁰⁾

Applicant was arrested in 1996 for illegal drug possession with intent to distribute and possession of illegal firearms. ⁽¹¹⁾ He was convicted in state court for the drug-related charges. The weapons charge was dismissed, but the weapons were confiscated. Applicant successfully completed a period of probation and served community service as his sentence for the offenses. ⁽¹²⁾

Applicant signed his Security Clearance Application (SF 86) on August 21, 2000, and the final form of his application was electronically filed on September 1, 2000.

As to **Question 22** regarding Applicant's police record for offenses related to firearms or explosives, Applicant failed to

disclose his arrest for possession of illegal firearms in 1996.

As to **Question 27** concerning his use of illegal drugs and drug activity in the preceding seven years, Applicant listed only the drug incident related to his 1996 arrest. He failed to disclose his personal use of methamphetamines and marijuana with varying frequency from at least 1993 to 2000.

As to **Question 28** concerning use of illegal drugs anytime when serving in a sensitive position, he failed to disclose his use of illegal drugs and drug activity while holding security clearances while in the Navy and when later employed by a federal contractor.

As to **Question 29** concerning the purchase, manufacture, or distribution of illegal drugs in the preceding seven year period, Applicant failed to disclose methamphetamine sales related to his 1996 arrest and conviction, and his sale of methamphetamines to a third party from time to time for profit or otherwise. [\(13\)](#)

As to **Question 33** concerning bankruptcy matters, Applicant failed to disclose he filed for Chapter 13 bankruptcy relief on December 7, 1995. [\(14\)](#)

As to **Question 38** regarding debt delinquencies exceeding 180 days in the preceding seven year period, Applicant denied having any such debts, when, in fact, he had been delinquent on a credit card debt in the amount of \$6,286.00 that had been reduced to judgment against him in July 1997. [\(15\)](#)

On his sworn statement provided to a Special Agent of the Defense Security Service on June 25, 2003, Applicant stated he had stopped using methamphetamines in 1996 following his arrest, [\(16\)](#) and failed to disclose he had continued using methamphetamines until at least 2001. He further denied he had ever sold illegal drugs to anyone.

Applicant filed his state income tax return when due for tax year 1997. [\(17\)](#) His state income tax return for 1999 was signed by him on April 16, 2001. [\(18\)](#) The 1999 return was required to be filed by May 1, 2000. [\(19\)](#) At the time of the hearing, Applicant had not filed his state and federal 2001 and 2002 tax returns. [\(20\)](#)

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines For Determining Eligibility For Access To Classified Information*, sets forth the criteria which must be evaluated when determining security clearance eligibility. The adjudicative guidelines specifically distinguish between those factors that are considered in denying or revoking an employee's request for access to classified information (Disqualifying Conditions), together with those factors that are considered in granting an employee's request for access to classified information (Mitigating Conditions). By acknowledging that individual circumstances of each case are always different, the guidelines provide substantive standards to assist an administrative judge in reaching fair and impartial common sense decisions.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at well-informed decisions. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the conduct of the applicant and the circumstances in any case, the factors an administrative judge should consider pursuant to the concept are: (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 individual's age and maturity at the time of the conduct; (5) the voluntariness of the 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.

Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interests of national security. Granting an applicant's clearance for access to classified information is predicated on a high degree of trust and confidence in the individual. Accordingly,

decisions under the Directive must include consideration of not just the *actual* risk of disclosure of such information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information in any aspect of his or her life. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information.⁽²¹⁾ The decision to deny a security clearance request to an individual is not necessarily a determination of the loyalty of the applicant.⁽²²⁾ It is merely an indication the applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

In accordance with the Directive, the government bears the burden of proof in the adjudicative process to first establish conditions by substantial evidence which indicate it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information.⁽²³⁾ The legal standard for the burden of proof is something less than a preponderance of the evidence.⁽²⁴⁾ When the government meets this burden, the corresponding heavy burden of rebuttal then falls on the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the position of the government, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.⁽²⁵⁾

Upon consideration of all the evidence submitted in this matter, the following adjudicative guidelines are appropriate for evaluation with regard to the facts of this case:

Guideline H - Drug Involvement is a security concern because 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 is a security concern because conduct involving questionable judgment, trustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Guideline J - Criminal conduct is a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

CONCLUSIONS

I have thoroughly considered all the facts in evidence in this case and the legal standards required by the Directive. The government has established its case for disqualification under Guideline H - Drug Involvement.

Considering all the evidence, Drug Involvement Disqualifying Conditions (DI DC) E2.A8.1.2.1. (*Any drug abuse*), and DI DC E2.A8.1.2.2. (*Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*), apply in this case. Drug abuse is defined in E2.A8.1.1.3. (*The illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction*).

Applicant admits conduct that constitutes drug abuse. His most recent admitted use of marijuana was in November 2004. He regularly used marijuana and other drugs during various phases of his adult life since 1969. He used and

purchased methamphetamines from 1985 to 1996, and 2001. He also admits having used cocaine and LSD many years ago. He continued using drugs even after being arrested for illegal drug possession and sale in 1996. He was provided a gratuitous opportunity for support of a drug-free lifestyle thereafter when he successfully completed court imposed probation. Nevertheless, he returned to using drugs over the next eight years. He chose not to seek professional assistance, rehabilitation, or counseling opportunities for his benefit at anytime. His continued use of several different drugs when he held clearances highlights his bad judgment causing very serious concerns. His behavior and judgment regarding his illegal drug activity has persisted throughout his adult life, and remains clearly unpredictable. Applicant's conduct constituted a blatant disregard and lack of respect for critical rules and regulations related to his active duty service in the Navy, and related government contract work thereafter, exemplifying the addictive nature of his drugs of choice.

I have considered all the mitigating conditions, and particularly Drug Involvement Mitigating Condition (DI MC) E2.A8.1.3.1. (*The drug involvement was not recent*), and DI MC E2.A8.1.3.3. (*A demonstrated intent not to abuse any drugs in the future*), and conclude they do not apply.

While Applicant's sole drug offense occurred in 1996 and he successfully completed all requirements of his sentence, he returned to using drugs thereafter knowing full well the risks associated with illegal drug matters as applied to security clearance considerations. ⁽²⁶⁾ Clearly, Applicant did not comprehend the extent of his drug use. In the context of this matter highlighted by his continued drug use at least until November 2004, I consider his involvement with drugs to be recent.

It is commendable Applicant has abstained from drug use since November 2004, however, he offered no justifiable excuse for continuing to use drugs for eight years following his arrest. He failed to conscientiously pursue a positive lifestyle or professional counseling as a means of achieving abstinence. Simply blaming his female companion does not meet his heavy burden of persuasion to effectively mitigate the government's concerns. Applicant did not demonstrate by his actions a prompt and serious commitment to change his life after the offense occurred. The presence or absence of rehabilitative and other pertinent positive behavioral changes are significant factors in the overall adjudicative process. To his credit, Applicant has made positive changes presently supportive of his efforts to abstain from the use of illegal drugs, however, the long-term influence of his new lifestyle is uncertain, and not enough time has passed to be confident Applicant has achieved a full understanding of the behavioral and psychological effects of his actions. Despite his extensive history of drug use and associated activities, Applicant denies he has any problems with drugs. ⁽²⁷⁾ He has failed to demonstrate mature personal insight into his actual motivation for his prior behavior, typically illustrated by an extended period of responsible conduct and meaningful rehabilitation.

I have further considered all the facts in evidence set forth above and conclude the government has also established its case for disqualification under Guideline E - Personal Conduct. Based on all the evidence, Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2. (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel 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*) and PC DC E2.A5.1.2.3. (*Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other representative in connection with a personnel security or trustworthiness determination*),

apply in this case.

Applicant was aware when he completed his SF 86 in August 2000 he had been arrested for possession of illegal weapons in 1996. The question is clear. Disclosure of the arrest is not predicated on whether or not Applicant was ultimately convicted of the offense. His personal drug use and related activities were also apparent to him as it was actually on going when he completed the application. It is also highly unlikely he would not have recalled his marijuana use while serving in the Navy when he held a clearance. It is reasonable to infer Applicant contemplated that disclosure of such information might negatively impact his security clearance application. One objective of the security clearance process is to determine all relevant and material information concerning an applicant. Based upon truth and honesty, the process requires full and open disclosure by the applicant of all requested information. Any intentional misrepresentation or omission by an applicant raises serious concerns about the character and overall integrity of the individual. The government's evidence and Applicant's admissions constitute substantial evidence of a disqualifying condition under Guideline E.

I have considered all the Personal Conduct Mitigating Conditions (PC MC), and especially PC MC E2.A5.1.3.3. (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*), and conclude it does not apply.

Applicant had an affirmative obligation to determine the status of all information requested in the SF 86, and to provide and disclose complete and accurate answers to each item of the questionnaire. Question 22 is clear. It is not limited to information only about criminal convictions, but also applies to being arrested for any offense related to firearms or explosives.⁽²⁸⁾ The questions concerning drug use are also clear. Applicant's extensive drug involvement over his lifetime constitutes a major part of his adult lifestyle. He was quite familiar with the security clearance process having been involved with it since he joined the Navy in 1973. After submitting his SF 86 in September 2000, Applicant met with a Defense Security Service (DSS) investigator on June 25, 2003.⁽²⁹⁾ When confronted, he stated he did not know why his past use of marijuana was not listed on his SF 86.⁽³⁰⁾ His use and involvement with metamphetamines and other drugs was also not mentioned on his SF 86, except with reference to an eight month period concluding with his arrest in 1996.⁽³¹⁾ He met with a different investigator on September 11, 2003 to further address specifics of his drug use.⁽³²⁾ There are inconsistencies in the two statements. In his first statement in June 2003, he indicated he never sold any drugs to anyone.⁽³³⁾ In his second statement provided less than three months later, he stated the first time he was involved in the sale of illegal drugs was in 1985, and the last time was in 1996 before his arrest.⁽³⁴⁾ He said in his first statement he used methamphetamines only until 1996, implying he stopped thereafter.⁽³⁵⁾ In his second statement, he admitted using methamphetamines until 2001, at least on a more limited basis.⁽³⁶⁾ Finally, on his SF 86 submitted in 2000, he indicated he only used methamphetamines ten times in 1995-1996 over an eight month period.⁽³⁷⁾ On his statement given in June 2003, he admitted actually using methamphetamines from 960 to 1,200 times from 1992 to 1996.⁽³⁸⁾

Applicant had nearly three years to reconsider his responses on his SF 86 and properly disclose the correct information, particularly noting he had a full opportunity to do so during the first DSS interview. The omissions on his SF 86 and first sworn statements were apparent to Applicant when he prepared his answers and were made intentionally. The

omissions were a deliberate and self serving attempt by Applicant to mislead and inappropriately influence the outcome of his security clearance application. Considering all the circumstances, Applicant's candor and credibility are highly questionable given the seriousness and chronology of the events. Accordingly, Applicant has failed to successfully mitigate the personal conduct security concerns.

I have further considered all the facts in evidence set forth above and conclude the government has also established its case for disqualification under Guideline J - Criminal Conduct. Based upon all the evidence, Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1. (*Allegations or admission of criminal conduct, regardless of whether the person was formally charged*), applies in this case. [\(39\)](#)

Applicant did not timely file his state income tax return in 1999, nor has he filed his state and federal income tax returns for tax years 2001 and 2002 to date, in clear violation of state and federal law. He offered no meaningful justification for doing so. In addition, Title 18 U.S.C. § 1001, provides that knowingly and willfully submitting materially false, fictitious, or fraudulent information in any matter within the jurisdiction of the U.S. Government is a crime punishable by a fine and up to five years imprisonment. Applicant's conduct in failing to file required tax returns and deliberately omitting significant material information about his extensive involvement with drugs and other matters required to be provided as a part of his SF 86 responses qualifies as serious uncharged criminal conduct within the meaning of Guideline J.

I have considered all the Criminal Conduct Mitigating Conditions (CC MC), and especially CC MC E2.A10.1.3.1. (*The criminal behavior was not recent*), CC C E2.A10.1.3.2. (*The crime was an isolated event*), and CC MC E2.A10.1.3.6. (*There is clear evidence of successful rehabilitation*). I conclude none apply in this case.

While Applicant submitted verification he filed his 1999 state tax return about a year after it was due, he produced no documentation verifying any of his delinquent 2001 and 2002 tax returns have been properly filed. I conclude this conduct to be recent and not isolated events because the returns are still outstanding and cover multiple tax years. As set forth above, the omissions on Applicant's SF 86 and the statements he submitted to two DSS investigators were numerous, intentionally calculated, and materially misleading to the proper processing and analysis of his security clearance application. He did not disclose the appropriate information until confronted with the contradictions. In the context of this matter, Applicant has failed to mitigate the criminal conduct security concerns raised in this case.

I have further reviewed all the record evidence under the "whole person" concept required by the Directive in evaluating Applicant's vulnerability in protecting our national security. An Applicant with a good or even exemplary work history may engage in conduct that has negative security implications. Although Applicant's loyalty to the United States is not in question, I am persuaded by the totality of the evidence that it is not clearly consistent with the national interest to grant Applicant a security clearance. For the reasons stated, Applicant has not met the strict guidelines for issuance of a clearance, and he has failed to mitigate the security concerns regarding his drug involvement, personal, and criminal conduct. Accordingly, Guidelines H, E, and J are decided against Applicant.

FORMAL FINDINGS

In accordance with Section E3.1.25 of Enclosure 3 of the Directive, the following are the formal findings as to each allegation in the SOR:

Paragraph 1. Drug Involvement (Guideline H) AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. Against the Applicant

Subparagraph 1.h. Against the Applicant

Subparagraph 1.i. Against the Applicant

Subparagraph 1.j. Against the Applicant

Subparagraph 1.k. Against the Applicant

Paragraph 2. Personal Conduct (Guideline E) 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

Paragraph 3. Criminal Conduct (Guideline J) AGAINST THE APPLICANT

Subparagraph 3.a. Against the Applicant

Subparagraph 3.b. Against the Applicant

Subparagraph 3.c. 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.

David S. Bruce

Administrative Judge

1. GE 2, (Applicant's Security Clearance Application (SF-86) dated September 1, 2000), at 1-2.
2. *Id.* at 4.
3. *Id.* at 8. See also Tr. at 66.
4. Tr. at 29-30.
5. *Id.* at 32-34.
6. AE A (Employee Performance Appraisals). See also Tr. 37-40.
7. Tr. at 59-61.
8. *Id.* 61.
9. *Id.* at 62-63.
10. GE 4 (Applicant's sworn statement dated September 11, 2003), at 2.
11. GE 5 (Arrest report dated June 4, 1996). See also GE 2, *supra* note 1, at 6.
12. Tr. at 65-67.
13. *Id.* at 63.
14. GE 8 (U.S. Bankruptcy Court records - December 5, 1995, consisting of nine pages).
15. GE 9 (Credit report dated April 10, 2001), at 7.
16. GE 3 (Applicant's sworn statement dated June 25, 2003), at 3.
17. AE C (Applicant's Income Tax Returns for 1997 and 1999), at 16-21.
18. *Id.* at 28.
19. *Id.* at 29.
20. Tr. at 69.
21. Directive, Enclosure 2, Para. E2.2.2.
22. Executive Order 10865 § 7.
23. ISCR Case No. 96-0277 (July 11, 1007) at p. 2.
24. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
25. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Para. E3.1.15.
26. Tr. at 75-79.

27. *Id.* at 77.

28. GE 2, *supra* note 1, at 6.

29. GE 3, *supra* note 16, consisting of 16 pages.

30. *Id.* at 4.

31. GE 2, *supra* note 1, at 7.

32. GE 4, *supra* note 10.

33. GE 3, *supra* note 24, at 4.

34. GE 4, *supra* note 27, at 2.

35. GE 3, *supra* note 24, at 3.

36. GE 4, *supra* note 27, at 1.

37. GE 2, *supra* note 1, at 6.

38. GE 3, *supra* note 24, at 3-4.

39. It is noted that Applicant's conviction for drug-related charges in 1996, in and of itself, and his involvement with illegal drugs for many years, are not specifically referenced as allegations under paragraph 3 of the SOR. Accordingly, I have not considered Applicant's arrest, conviction, or history of drug involvement, as either a single serious crime or multiple lesser offenses as potentially disqualifying conditions under Guideline J.