

KEYWORD: Drugs; Personal Conduct

DIGEST: Applicant used marijuana from 1978 until two years after he completed his security clearance application in 2001. He also failed to disclose his marijuana use on the security clearance application. Applicant failed to mitigate security concerns raised by his drug involvement. As a drug user, he is disqualified from being granted a clearance by 10 U.S.C. § 986. Clearance is denied.

CASENO: 03-21944.h1

DATE: 02/23/2005

DATE: February 22, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-21944

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant used marijuana from 1978 until two years after he completed his security clearance application in 2001. He also failed to disclose his marijuana use on the security clearance application. Applicant failed to mitigate security concerns raised by his drug involvement. As a drug user, he is disqualified from being granted a clearance by 10 U.S.C. § 986. Clearance is denied.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 22 April 2004, DOHA issued a Statement of Reasons<sup>(1)</sup> (SOR) detailing the basis for its decision-security concerns raised under Guideline H (Drug Involvement) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on 12 June 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 3 January 2005. On 8 February 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 17 February 2005.

**FINDINGS OF FACT**

Applicant is a 45-year-old electrical engineer for a defense contractor. Ex. 1 at 1, 2. Applicant started using marijuana in 1978 while he was in college. He continued to use marijuana from 1979-82 while he served in U.S. Army military intelligence and held a top secret security clearance. From 1978-88, Applicant used marijuana three to four times a year. Between 1988 and 1992, he used marijuana about once a week. From 1992 until 2003, he used marijuana sporadically. Although he usually got his marijuana from family members, he has purchased marijuana. He was arrested twice for possessing marijuana, once in 1992 and again in 2000. Ex. 2 at 4-5; Ex. 1 at 9.

In 1992, he was pulled over by the police for driving through a road block. When the officer asked him for identification, Applicant claimed he didn't have any with him. He then gave the officer his brother's name and a false date of birth. Applicant gave him the false information because he had an outstanding warrant for not paying a speeding ticket and he was scared. When the officer searched Applicant's car, he found eight grams of marijuana. Applicant was charged with possession of marijuana, pled guilty, paid a fine, was put on probation for six months, and eventually the case was dismissed. *Id.* at 4; Ex 3 at 1-2.

In November 2000, Applicant was stopped by police for speeding. Applicant was arrested for driving while intoxicated (DWI) and for possession of a marijuana cigarette in the ashtray of his vehicle. Ex. 4 at 1-2. Applicant pled guilty to the DWI and the other offense was dismissed. Ex. 2 at 3.

On 28 November 2001, Applicant completed a security clearance application (SCA) in which he certified his answers were "true, complete, and correct" to the best of his knowledge and belief and acknowledged that a knowing and willful false statement could be punished under 18 U.S.C. § 1001. Ex. 1 at 11. Question 24 asked if Applicant had ever been charged with or convicted of any offense related to drugs or alcohol. *Id.* at 8. Applicant listed both arrests for possession of marijuana. Question 27 asked if, in the previous seven years, Applicant had used any controlled substances, including marijuana. Applicant answered "no."

### POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, 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." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

## CONCLUSIONS

### **Guideline H-Drug Involvement**

In the SOR, DOHA alleged Applicant used marijuana from 1992 to the present (¶ 1.a) and is therefore disqualified from being granted a clearance under 10 U.S.C. § 986 (¶ 1.b). Applicant admitted both allegations. Answer. 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 ¶ E2.A8.1.1.

The Government established potentially disqualifying conditions under Guideline H. Applicant abused drugs by using marijuana (DC E2.A8.1.2.1) and illegally purchased drugs (DC E2.A8.1.2.2). None of the mitigating conditions listed under the guideline apply. Applicant's use was recent. It continued after his submission of the SCA and while he held an interim security clearance. I find against Applicant on ¶ 1.b.

A person who is an unlawful user of a controlled substance is disqualified from being granted a security clearance. 10 U.S.C. § 986. Although Applicant claims he is no longer a marijuana user, he was at the time he filed his SCA to obtain a security clearance. He further admitted that he continued to use at least up until he was interviewed by a Defense Security Service agent. Ex. 2 at 4. Under the circumstances, I find against Applicant on ¶ 1.b.

### **Guideline E-Personal Conduct**

In the SOR, DOHA alleged Applicant falsified his SCA by deliberately denying he had used drugs (including marijuana) in the previous seven years (¶ 2.a). Applicant admitted deliberately falsifying his SCA. Answer. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government established a potentially disqualifying condition under Guideline E. Applicant deliberately omitted relevant and material facts from an SCA. DC E2.A5.1.2.2. An applicant's drug use is relevant and material to his security worthiness. None of the listed mitigating conditions apply. I find against Applicant.

## **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

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

## **DECISION**

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

James A. Young

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).

