

KEYWORD: Drugs; Personal Conduct

DIGEST: Applicant is a 47-year-old employee of a defense contractor. Applicant wrongfully used marijuana intermittently between about 1973 and early 2002. He used the drug socially and privately during this period, partly to relieve tension and partly to reduce the discomfort of a stomach ulcer. He stopped using the drug at times-sometimes for extended periods-but resumed when the opportunity presented itself. When he submitted his security clearance application, Applicant admitted marijuana use but falsely reported that his last use was in 1999, rather than 2002, hoping to minimize the impact of the misconduct. Applicant has not mitigated the security concerns arising from his drug use or his false statement on his security clearance application. Clearance is denied.

CASENO: 03-22033.h1

DATE: 09/27/2004

DATE: September 27, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-22033

ISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 47-year-old employee of a defense contractor. Applicant wrongfully used marijuana intermittently between about 1973 and early 2002. He used the drug socially and privately during this period, partly to relieve tension and partly to reduce the discomfort of a stomach ulcer. He stopped using the drug at times-sometimes for extended periods-but resumed when the opportunity presented itself. When he submitted his security clearance application, Applicant admitted marijuana use but falsely reported that his last use was in 1999, rather than 2002, hoping to minimize the impact of the misconduct. Applicant has not mitigated the security concerns arising from his drug use or his false statement on his security clearance application. Clearance is denied.

STATEMENT OF THE CASE

On January 7, 2003, Applicant submitted an application for a security clearance. Under Executive Order 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 (the "Directive"), the Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On June 9, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline H, Drug Involvement, and Guideline E, Personal Conduct, of the Directive.

Applicant answered the SOR in writing on July 1, 2004. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on July 14, 2004. Department Counsel provided a complete copy of the file of relevant material (FORM) to Applicant, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the

FORM on August 2, 2004, and provided a statement in response dated August 29, 2004. The case was assigned to me on September 10, 2004.

FINDINGS OF FACT

Applicant admitted all the factual allegations in the SOR, with explanations. Applicant's Answer to SOR, dated July 1, 2004, at 1. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 47 years old. Item 4, Security Clearance Application dated January 1, 2003, at 1. He is employed by a defense contractor as a senior architect. *Id.* He seeks a security clearance.

Applicant first used marijuana in high school when he was about 16 years old. Item 5, Applicant's Statement, dated January 21, 2004, at 1. He smoked marijuana in social settings with his peers. *Id.* Applicant did not use marijuana in college or for several years after graduation. *Id.*

Applicant began smoking marijuana again in about 1983 or 1984. *Id.* at 2. He obtained the drug from a friend. *Id.* Applicant used it partly to ease the discomfort of a stomach ulcer, and partly to relieve tension. *Id.* He used it only occasionally, both at social events and privately at home. Applicant purchased some of the marijuana. *Id.*

In 1987, Applicant stopped using marijuana for a while. The friend who supplied the drug moved away. *Id.* Also, Applicant's medical care provider suggested that he stop using marijuana. *Id.*

Applicant resumed casual use of marijuana in about 1990. *Id.* at 3. His use was intermittent: sometimes he would use it several times in social settings within a few weeks; sometimes months would pass without using the drug. *Id.* He also used the drug privately about once every two weeks. *Id.*

In 1999, Applicant again stopped using marijuana on the advice of a medical care provider. *Id.* After about six months, he re-established contact with a group of friends who used marijuana, and began using marijuana socially every couple of weeks. He also used it privately, sometimes on a weekly basis. *Id.*

In late Spring 2002, Applicant smoked marijuana for the last time. *Id.* He stopped using it because of his spouse's dislike of the drug and his commitment to keeping his children free of drugs. *Id.*

On January 7, 2003, Applicant completed an SF 86, Security Clearance Application. Item 4, *supra*, at 1. Question 27 on the form was, "Your Use of Illegal Drugs and Drug Activity-Illegal Use of Drugs. Since the age of 16 or in the last 7 years, which ever is shorter, have you illegally used any controlled substance, for example, marijuana . . ." *Id.* Applicant answered "Yes" to this question. Following up that answer, he indicated he used marijuana from "1996/01/01" to "1999/02/11." *Id.* Applicant did not reveal his use of marijuana in the Spring of 2002. When asked to describe the frequency of his use, he responded, "Not Sure."

Investigators interviewed Applicant about his eligibility for a security clearance. On January 21, 2004, Applicant made a statement describing his marijuana use between high school and the Spring of 2002. Item 5, *supra*, at 4. Applicant indicated he did not report drug usage prior to 1996 because the question only asked about drug usage within the last 7 years. *Id.* Applicant admitted he did not report his use of marijuana after February 1999 in an attempt to minimize its impact on his clearance. *Id.*

POLICIES

In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." 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 a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline H, Drug Involvement. 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.

Guideline E, Personal Conduct. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

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

"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." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (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 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. *Id.*

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. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. Directive, ¶ E3.1.15. 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 (App. Bd. Dec. 19, 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2.

CONCLUSIONS

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

Guideline H, Drug Involvement.

The Government's documentary matters and Applicant's admissions constitute substantial evidence of several disqualifying conditions under Guideline H of the Directive. Specifically, ¶ E2. A8.1.2.1 of the Directive provides that "any drug abuse" may be disqualifying. Applicant admitted using marijuana intermittently from about 1973 until the Spring of 2002. Additionally, ¶ E2. A8.1.2.2 of the Directive provides that any drug possession, including "purchase" may be disqualifying. Applicant admitted purchasing marijuana on some occasions. Applicant's long-term use and possession of marijuana raises questions about his willingness or ability to protect classified information.

These security concerns can be mitigated where it is determined that the drug abuse was not recent. Directive, ¶ E2.A8.1.3.1. This mitigating condition does not apply, however. While some of his drug abuse occurred long ago, it continued until less than a year before applying for a security clearance.

It may also be mitigating if the "drug involvement was an isolated or aberrational event." Directive, ¶ E2. A8.1.3.2. It is readily apparent that Applicant's use of marijuana was not isolated incident or an unusual occurrence. Instead, it was a regular part of his social and personal life intermittently for many years.

Under the Directive, ¶ E2. A8.1.3.3, it may be mitigating where an applicant demonstrates an intent not to abuse drugs in the future. Here, Applicant avows he will never use marijuana again. I note that he has stopped before and resumed using it again a short while later. This was true even though a medical care provider had suggested that he stop using the drug. Considering the length of time he has used marijuana and his inconsistent record of quitting in the past, I conclude this mitigating condition does not apply.

I considered all the circumstances in light of the "whole person" concept. I conclude Applicant has not mitigated the security concerns arising from his drug involvement.

Guideline E, Personal Conduct.

Under ¶ E2.A5.1.2.2 of the Directive, "the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . . or similar form used to conduct investigations" may be disqualifying. In this case, Applicant deliberately falsified the date of his most recent use of marijuana to minimize its impact on his security clearance. I conclude the fact was material, because the recency of the unlawful drug use could mitigate the seriousness of the misconduct.

It may be mitigating where the information was "not pertinent to a determination of judgment, trustworthiness, or reliability." Directive, ¶ E2.A5.1.3.1. However, this mitigating condition does not apply. For the reasons discussed above, I conclude the recency of Applicant's marijuana use was pertinent to the issue of Applicant's judgment, trustworthiness, or reliability.

It may also be mitigating where the individual subsequently provided correct information voluntarily, or made prompt, good-faith efforts to correct the falsification before being confronted with the facts. Directive, ¶ E2.A5.1.3.2 and ¶ E2.A5.1.3.3. However, there is no indication Applicant attempted to voluntarily correct the false statement before being confronted by investigators.

Another possible mitigating condition may arise if an applicant "has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress." Directive, ¶ E2.A5.1.3.5. Here, Applicant admitted to authorities his drug abuse, substantially reducing his vulnerability to exploitation. He has also stopped associating with friends who use marijuana, which is also mitigating. Directive, ¶ E2.A5.1.3.7. While these factors have some weight, under all the circumstances I conclude that Applicant's lack of truthfulness in answering the personnel security questionnaire indicates a lack of candor and trustworthiness such that he should not receive a security clearance.

I conclude Applicant did not provide false or misleading information about his drug use before 1996. The question at issue specifically asked only about drug use within the previous seven years, and Applicant reported his drug use beginning seven years before the completion of the security clearance application. Nothing about the follow-up entry reporting the dates and frequency of usage indicated that Applicant was required or expected to report incidents outside the 7 year time frame.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline H: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

DECISION

In light of all of 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.

Michael J. Breslin

Administrative Judge