

KEYWORD: Drugs; Financial Considerations; Personal Conduct; Criminal Conduct

DIGEST: This 30-year-old technician for a defense contractor has a decade-long history of marijuana use that apparently ended only after the last of his three drug-related arrests, in 2003. He also has an ongoing history of 13 delinquent debts exceeding \$32,000.00. He falsified material facts as to four separate questions on his 2001 security clearance application. His three arrests and his falsifications all constitute criminal misconduct. Mitigation and/or financial rehabilitation have not been established. Clearance is denied.

CASENO: 03-22038.h1

DATE: 10/19/2005

DATE: October 19, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-22038

DECISION OF ADMINISTRATIVE JUDGE

BARRY M SAX

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

This 30-year-old technician for a defense contractor has a decade-long history of marijuana use that apparently ended only after the last of his three drug-related arrests, in 2003. He has an ongoing history of 13 delinquent debts exceeding \$32,000.00. He falsified material facts as to four separate questions on his 2001 security clearance application. His three arrests and his falsifications all constitute criminal misconduct. Mitigation and/or financial rehabilitation have not been established. Clearance is denied.

STATEMENT OF THE CASE

On December 9, 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 February 5, 2005, Applicant responded 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. Department Counsel issued a File of Relevant Material (FORM) on April 25, 2005. The Form instructed Applicant that any response to the FORM had to be submitted within 30 days of its receipt by Applicant. Any response was due by June 10, 2005, but no submission to the

FORM was received as of that date. The matter was assigned to me for resolution on July 7, 2005.

FINDINGS OF FACT

Applicant is a 30-year-old employee of a defense contractor. The SOR contains six allegations, 1.a. - 1.f., under Guideline H (Drugs); 13 allegations, 2.a - 2.m., under Guideline F (Financial); four allegations, 3.a - 3.d., under Guideline E (Personal Conduct); and two allegations, 4.a and 4.b., under Guideline J (Criminal Conduct). Applicant admits all six Guideline F allegations and allegations 2.a - 2.j. and 2.l. He *denies* allegations 2.k and 2.m.; and allegations 3.a - 3.d under Guideline E (Personal Conduct). He did not specifically answer allegations 4.a. and 4.b., which I accept as denials. All admitted allegations are accepted and made Findings of Fact.

After considering the totality of the evidence of record in the FORM, I make the following FINDINGS OF FACT as to each SOR allegation, based on the contents of the FORM, including Applicant's sworn statement and his response to the SOR. No response to the FORM was submitted.

As alleged in the SOR, under:

Guideline H (Drugs)

1.a. - Applicant used marijuana, with varying frequency, from about 1994 to March 2003;

1.b. - Applicant purchased marijuana;

1.c. - Applicant was arrested on June 1, 1996 in State A, and charged with (1) Possession of Marijuana; (2) Carrying a Concealed Weapon; and (3) Contributing to the Delinquency of a Minor. He pleaded guilty to Count (1) and was sentenced 11 months and 29 days in jail, suspended.

He pleaded guilty to Count (3) and was sentenced to six months in jail, suspended and fined \$100 and costs;

1.d. - Applicant was charged on April 17, 2002 in State B with Possession of Marijuana. He was found guilty and sentenced to 30 days in jail, suspended, six months driver's license suspension, and was ordered to pay \$397 in fines, fees and court costs;

1.e. - Applicant was arrested in State B in March 2003 and charged with Possession of Marijuana. He failed to appear and a warrant was issued for his arrest. He was found guilty of (1) Contempt, Failure to Appear; and (2) Possession of Marijuana, and was sentenced to 30 days in jail with 30 days suspended, awarded 12 months of supervised probation, had his driver's license suspended, and was ordered to undergo random drug screening;

1.f. - Applicant continued to use marijuana to at least March 2003, notwithstanding his application for a security clearance on October 15, 2001.

Guideline F (Financial)

As of the issuance of the SOR, Applicant had the following debts that were either past due, delinquent, charged off, referred for collection, or reduced to judgment:

2.a. - Student Loan Agency A - \$5,521.00;

2.b. - Communications Company B - \$12.00;

2.c. - Credit Card Company C - \$384.00;

2.d. - Real Estate Company D - \$1,298.33;

2.e. - Collection Agency E - \$554.41;

2.f. - Finance Company F - \$4,610.24;

2.g. - Auto Credit Company G - \$10,519.00;

2.h. - Finance Company H - \$2,169.00;

2.i. - Credit Agency I - \$2,423.00;

2.j. - Collection Agency J - \$2,791.00;

2.k. - Creditor K - \$1,915.73;

2.l. - Credit Agency L - \$441.00;

2.m. - Collection Agency M - \$115.00.

Applicant claims that the debts cited in SOR 2.k. (\$1,915.73) and 1.m. (\$115.00), have been paid off (Item 3), but he has not documented his claims. I find that all the cited debts remain owing and unresolved. The 13 delinquent debts total about \$32,000.00.

Guideline E (Personal Conduct)

Applicant falsified material facts on his security clearance application of October 15, 2001, in his response to the following questions:

3.a. - "**24. Your Police Record - Alcohol/Drug Offenses** - [Have you ever been charged?] Applicant answered "No" and omitted any mention of his drug-related arrest in 1996, as cited in SOR 1.c., above;

3.b. - "**27. Your Use of Illegal Drugs and Drug Activity - Illegal Use of Drugs** - [since the age of 16 or in the last seven years]." Applicant answered "No" and omitted any mention of his use of marijuana, as set forth in SOR 1.a. , above;

3.c. - "**37. Your Financial Records - Unpaid Judgments** - [In the past seven years]." Applicant answered "No" and omitted any mention of the debt cited in SOR 2.d., above;

3.d. - "**38. Your Financial Delinquencies** [In the past seven years, over 180 days delinquent and **39. Currently over 90 days delinquent**]." Applicant answered "No" and omitted any mention of the debts cited in SOR 2.a., 2.b., 2.c., 2.e., 2.f., 2.g., and 2.h, above

Guideline J (Criminal Conduct)

4.a. - Applicant's conduct, as cited in 1.c., 1.d., and 1.e., above, constitute criminal conduct; and

4.b. - Applicant's falsifications, as cited in SOR 3.a - 3.d., above, constitute violations of 10 U.S.C. 1001, all felonies.

POLICIES

Each adjudicative decision must also 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

Applicant is 30 years old. His conduct, as cited in the SOR and FORM, raises serious question about his judgment,

reliability, and trustworthiness under four separate guidelines of DoD Directive 5220.6. I find all of the allegations to be supported by the Government's evidence. After carefully considering all of Applicant's explanations, I also find the Applicant has not demonstrated financial rehabilitation as to the concerns expressed under Guideline F. Neither has he demonstrated adequate mitigation and/or extenuation of any of the other three Guidelines.

Drug Use - In a sworn statement (Item 6) Applicant admits using marijuana from 1994 to March 2003, when he was arrested for the third time on drug-related charges. He claims that his last use of marijuana was in March 2003, but the weight to be given that claim is reduced by the reality that it occurred one to two years after he completed his 2001 SF86 and clearly was a result of his arrest. In his response to the SOR (Item 3), he states that he answered "No" to "alcohol/drug-related offenses because I was told that the charges from 1996 were sealed meaning I would never have to comply [*sic*] with the offense again." It is not clear what he meant by "comply," but if he meant "report," that claim ignores the clear language of the question and also does not explain why he failed to report the other two arrests. In any case, along with the long period of use, the evidence suggests that any cessation of marijuana use was both recent and not the result of any voluntary change in character or basic outlook.

Disqualifying Conditions (DC) (1) any drug abuse and (2) illegal drug possession are clearly applicable. Mitigating Conditions (MC) - None are established by the record since (1) the drug involvement, in context, is still recent; (2) the drug involvement was not an isolated or infrequent event; and (3) there is no demonstrated intent not to abuse drugs in the future.

Financial Considerations - Applicant admitted the accuracy of all but two of the delinquent

debts. He has not established his claims that the latter two debts had been satisfied or otherwise resolved, and he had not established that he has entered into the resolution of any of the other cited delinquent debts. On this basis, I conclude that all of the 13 delinquent debts cited in the SOR remain outstanding.

Disqualifying Conditions - (1) a history of not meeting financial obligations; and (3) inability or unwillingness to satisfy debts are applicable. However, none of the parallel Mitigating Conditions have been established by the record.

Personal Conduct - Applicant clearly provided incorrect answers in his security clearance application to Questions 24, 27, 37, and 38. After considering his explanations, the last one being in his response to the SOR (Item 3), I conclude that Applicant knew and had reason to know he was answering falsely and that the false answers were deliberate attempts to deceive DoD.

Disqualifying Condition (1) is applicable - a "deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . .," but none of the parallel Mitigating Conditions is shown by the record.

Criminal Conduct - the marijuana - related arrests in 1996, 2002, and 2003 are established by the record and are admitted by Applicant. The deliberate falsifications of the four cited questions on his October 15, 2001 SF 86 constitute violations of 10 U.S.C. 1001.

Disqualifying Condition (1) any criminal conduct . . .and (2) a single serious crime or multiple lesser offenses are shown by the record, but none of the parallel itigating Conditions are established by the record.

FORMAL FINDINGS

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

Guideline H (Drugs) 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

Guideline F (Financial Considerations) 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

Guideline E (Personal Conduct) Against the Applicant

Subparagraph 3.a. Against the Applicant

Subparagraph 3.b. Against the Applicant

Subparagraph 3.c. Against the Applicant

Subparagraph 3.d. Against the Applicant

Guideline J (Criminal Conduct) Against the Applicant

Subparagraph 4.a. Against the Applicant

Subparagraph 4.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