

KEYWORD: Drugs; Alcohol; Personal Conduct

DIGEST: Applicant has used marijuana for many years until as recently as 2001. His usage occurred during a period when he held a security clearance. Additionally, Applicant has had a history of alcohol abuse that resulted in two alcohol-related incidents, and he continues to regularly consume alcohol. Finally, Applicant's credibility is extremely suspect, since he provided false information to the Government by not admitting that he used marijuana while holding a security clearance. Mitigation has not been shown. Clearance is denied.

CASENO: 03-22839.h1

DATE: 03/14/2005

DATE: March 14, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-22839

**DECISION OF ADMINISTRATIVE JUDGE**

**MARTIN H. MOGUL**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has used marijuana for many years until as recently as 2001. His usage occurred during a period when he held a security clearance. Additionally, Applicant has had a history of alcohol abuse that resulted in two alcohol-related incidents, and he continues to regularly consume alcohol. Finally, Applicant's credibility is extremely suspect, since he provided false information to the Government by not admitting that he used marijuana while holding a security clearance. Mitigation has not been shown. Clearance is denied.

**STATEMENT OF THE CASE**

On June 10, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed a notarized response, dated July 23, 2004, to the allegations set forth in the SOR, (Exhibit 3). He requested that his case be decided on the written record in lieu of a hearing.

On November 2, 2004, Department Counsel prepared the Department's written case. A complete copy of the File of Relevant Material (FORM) was provided to Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed a response to the FORM on December 7, 2004. The case was assigned to this Administrative Judge on December 17, 2004.

Department Counsel offered 10 documentary exhibits (Exhibits 1-10), and Applicant offered one documentary exhibit, a one page response to the FORM (Exhibit A). All exhibits have been admitted into evidence without objection.

### **FINDINGS OF FACT**

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline H (Drug Involvement), Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct) of the Directive. The SOR contains four allegations, 1.a., through 1.d., under Guideline H, four allegations, 2.a. through 2.d., under Guideline G, and one allegation, 3.a., under Guideline E. Applicant admitted all the SOR allegations. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the FORM, and the admitted documents, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 50 years old. He is employed as a flight line technician by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector. He is married.

#### **Paragraph 1 (Guideline H - Drug Involvement)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has abused illegal substances.

Applicant has admitted using marijuana with varying frequency from the mid 1970's until at least March 2001. Applicant was granted a Department of Defense security clearance in 1992, and from 1992 until at least 2001. Applicant used marijuana while holding a security clearance (Exhibit 3). From approximately 1996 to 2001, Applicant used marijuana an average of 4 or 5 days a week (Exhibit 6). Applicant claims that since his arrest in 2001, as discussed below, he has used no illegal substance (Exhibit 3).

On March 15, 2001, Applicant was arrested and charged with 5 counts including Driving Under the Influence (DUI) of

alcohol and drugs. He has admitted that he was he under the influence of alcohol and marijuana at the time of the arrest (Exhibit 6). He plead guilty to one count of DUI, and he was sentenced to serve 10 days in jail, pay fines totaling \$933, and complete a 36 hour alcohol education program (Exhibits 3, 6, 7, and 8).

In September 1994, Applicant failed a random urinalysis at his place of employment, and he was place on a 45 days suspension. He was referred to an employee assistance program (Exhibit 9).

**Paragraph 2 (Guideline G - Alcohol Consumption).**

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he abuses alcohol to excess.

Applicant's drinking has resulted in at least two alcohol related incidents where he was arrested. The more recent alcohol related incident occurred in March 2001, and has been discussed above. The previous incident occurred in 1990. Applicant was arrested and pled guilty to DUI. He was sentenced to pay a fine and attend alcohol education classes (Exhibits 3 and 6).

Applicant estimates that he now consumes approximately four or five 18 ounce glasses of light beer a night. Applicant believes that he must consume one dozen glasses of beer in a night to become intoxicated. He claims that recalls very few, if any , instances where he consumed alcohol to the point of intoxication since September 2001 (Exhibit 3).

**Paragraph 3 (Guideline E - Personal Conduct)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he furnished untruthful information to the Government. Applicant completed a signed, sworn Security Clearance Application (SCA) on July 24, 2001.

Question #28 of the SCA asked if Applicant EVER had used illegal drugs, while possessing a security clearance? Applicant answered "No" to this question. He had held a security clearance from November 1992 to the time he completed the SCA, and he should have listed his usage of marijuana, which occurred during the period that he retained a security clearance (Exhibits 1, 3, 4, and 5).

Applicant clearly was not honest with the information that he furnished to the Government on July 24, 2001. Applicant has admitted that he knew that he had used marijuana while holding a

security clearance, but he did not want to admit to the Government that he had been using the marijuana (Exhibits 3 and 6).

### POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents

its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case.

As set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of alcohol abuse and criminal conduct that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

## CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case, the Government has met its initial burden of proving by substantial evidence that Applicant has used illegal drugs, (Guideline H), that he used alcohol to excess, (Guideline G), and that he has exhibited poor judgement and untrustworthy behavior, (Guideline E). Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him.

### **(Guideline H - Drug Involvement)**

With respect to Guideline H, the Government has established its case. Applicant's improper and illegal drug abuse, including the use of marijuana, is of concern, especially in light of his desire to have access to the nation's secrets. The fact that Applicant used illegal substances, while holding a security clearance, must also be considered adversely to Applicant. Applicant's overall conduct pertaining to his illegal substance abuse clearly falls within Drug Involvement DC (E2.A8.1.2.1.), any drug abuse, and DC (E2.A8.1.2.2.), illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.

Based on the fact that Applicant last used marijuana, while holding a security clearance and he used it with great frequency as recently as 2001, I cannot conclude that Applicant's conduct can apply to MC (E2.A8.1.3.1.), the drug involvement was not recent or MC (E2.A8.1.3.3.), Applicant's stated intention not to continue using marijuana in the future.

In this case, the Government has met its initial burden of proving by substantial evidence that Applicant used illegal drugs for many years under Guideline H. Applicant, has not introduced sufficient evidence in rebuttal, explanation or mitigation. Accordingly, Paragraph 1, Guideline H, is concluded against Applicant.

### **(Guideline G -Alcohol Consumption)**

Applicant's alcohol consumption has resulted in two alcohol related arrests and convictions in 1990 and 2000.

As to the amount of alcohol he now consumes, Applicant now consumes approximately four or five 18 ounce glasses of light beer a night.

The Government established, by substantial evidence, that Applicant was involved in alcohol-related incidents away from work, such as driving under the influence, which is Disqualifying Condition (DC) (E2.A7.1.2.1.), and that he engaged in habitual or binge consumption of alcohol to the point of impaired judgment, DC (E2.A7.1.2.5.) Applicant has not demonstrated credible evidence to support a conclusion that he has reformed his habit and no longer consumes alcohol. Therefore, I cannot conclude that MC (E2.A7.1.3.2.), the problem occurred a number of years ago and there is no indication of a recent problem, or C (E2.A7.1.3.3.), positive changes in behavior supportive of sobriety, also applies.

Paragraph 2 is found against Applicant.

**(Guideline E -Personal Conduct)**

With respect to Guideline E, the evidence establishes that Applicant furnished to the Government an untruthful answer, regarding his marijuana usage, during a time period when he was holding a security clearance, in a SCA, completed on July 24, 2001.

The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. When such an individual intentionally falsifies material facts or fails to furnish relevant information to a Government investigator, it is extremely difficult to conclude that he nevertheless possesses the judgment, and honesty necessary for an individual given a clearance. In this case, there has been no reasonable explanation for Applicant's failure to inform the Government about his 1998 and 1999 alcohol related arrests. I conclude that Applicant knowingly and willingly failed to give complete, honest answers to the Government.

In reviewing the DCs under Guideline E, I conclude that DC (E2.A5.1.2.2.) applies because Applicant deliberately provided false and misleading information to the Government in a SCA. No MC applies in this paragraph. Applicant's conduct, considered as a whole, including his criminal conduct, and the misinformation that he provided to the Government, exhibits questionable judgement, unreliability, and a lack of candor. I resolve Paragraph 3, Guideline E, against Applicant

On balance, it is concluded that the Applicant has failed to overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding against Applicant as to the allegations expressed in Paragraphs 1, 2, and 3 of the Government's SOR.

**FORMAL FINDINGS**

**Paragraph 1. Guideline H: AGAINST APPLICANT**



Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant Subparagraph 1.d.: Against Applicant

**Paragraph 2. Guideline G: AGAINST APPLICANT**

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 3.c.: Against Applicant Subparagraph 4.d.: Against Applicant

**Paragraph 3. Guideline E: AGAINST APPLICANT**

Subparagraph 3.a.: Against 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.

Martin H. Mogul

Administrative Judge