

KEYWORD: Drugs

DIGEST: Applicant is 35 years old and is employed as a senior consultant for a defense contractor. He used and purchased marijuana in the past and he has used cocaine at least twice. Applicant was in high school when he first used marijuana out of curiosity. He continued using marijuana in college. After graduating from college with his second bachelor's degree, he moved out of the living accommodations he shared with roommates; they too smoked marijuana. Living in his own place, he stopped using drugs of any kind because he wanted to concentrate on his career and he knew drug use could be an impediment to upward mobility. Applicant's approximately three years of abstinence from drugs, together with his credibly stated intention not to use marijuana or cocaine in the future, successfully mitigates the security drug involvement concerns. Clearance is granted.

CASENO: 03-24951.h1

DATE: 05/31/2005

DATE: May 31, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-24951

**DECISION OF ADMINISTRATIVE JUDGE**

**JACQUELINE T. WILLIAMS**

**APPEARANCES**

## **FOR GOVERNMENT**

Sabrina E. Redd, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is 35 years old and is employed as a senior consultant for a defense contractor. He used and purchased marijuana in the past and he has used cocaine at least twice. Applicant was in high school when he first used marijuana out of curiosity. He continued using marijuana in college. After graduating from college with his second bachelor's degree, he moved out of the living accommodations he shared with roommates; they too smoked marijuana. Living in his own place, he stopped using drugs of any kind because he wanted to concentrate on his career and he knew drug use could be an impediment to upward mobility. Applicant's approximately three years of abstinence from drugs, together with his credibly stated intention not to use marijuana or cocaine in the future, successfully mitigates the security drug involvement concerns. Clearance is granted.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant 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"). On December 30, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision: security concerns under Guideline H (Drug Involvement). Applicant answered the SOR on January 7, 2005 and elected to have a hearing before an administrative judge.

On April 4, 2005, the case was assigned to me. A Notice of Hearing was issued to the parties on April 22, 2005, and the hearing was held on May 6, 2005. The transcript (Tr.) was received on May 17, 2005.

## **FINDINGS OF FACT**

Applicant admitted all of the allegations in the SOR. Those admissions are incorporated here 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 a single, 35-year-old senior consultant for a defense contractor. He was in high school when he first tried marijuana out of curiosity and that was in the Fall or Spring of 1988 or 1989; he was about 18 at the time. He then went on to college, where he played soccer and did not smoke marijuana at all during that time. Applicant was drug free from May 1989 when he graduated from high school through August 1993 when he graduated from college.

Between the Fall of 1993 and Winter of 1994 through 2002, he used and purchased marijuana occasionally; his purchase of the drug was solely for his own use. Applicant enrolled in a new college in 1995 and graduated in 1998. In the Fall of 1997 through his graduation in 1998, he occasionally used marijuana 4-5 times a week. From college graduation in 1998 into 1999, he did not use marijuana.

Applicant used cocaine at least twice when he was 24 years old, from about 1993 to 1994. He was offered the cocaine in two different social settings and tried it because he was curious. Not liking how cocaine made him feel, he refused to use it in the future when it was offered.

He has been drug free of both marijuana and cocaine since June 2002 and no longer associates with people who use drugs. Applicant credibly testified that his drug use was clearly behind him and that it was his career and his future endeavors in life that are of paramount importance now.

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to

hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline H, pertaining to drug involvement, with its respective DC and MC, applies in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically, these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation, and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(1)</sup> The government has the burden of proving controverted facts.<sup>(2)</sup> The burden of proof in a security clearance case is less than a preponderance of the evidence.<sup>(3)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation sufficient to overcome

the case against him.<sup>(4)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(5)</sup>

No one has a right to a security clearance<sup>(6)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(7)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(8)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(9)</sup> 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.

Based upon consideration of all the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline H - Drug Involvement: 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.<sup>(10)</sup>

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

## **CONCLUSIONS**

I have carefully considered all the facts in evidence and the legal standards. Applicant's admissions and the government's documentary evidence support the application of two disqualifying conditions under Guideline H of the Directive, specifically: Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1 (*any drug abuse*) and DI DC E2.A8.1.2.2 (*illegal possession including cultivation, processing, manufacture, purchase, sale, or distribution*), apply in this case. Applicant used and purchased marijuana with varying frequency from about 1998 to at least June 2002. However, there were periods between when he was drug free for years. He also used cocaine twice from about 1993 to 1994

I have considered all the Drug Involvement Mitigating Conditions (DI MC) and specifically considered 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 apply. Applicant tried marijuana in high school. He then went on to college and was drug free for four years. When he attended a different university for his second bachelor's degree, he started using marijuana again, and purchased it for his own use. He tried cocaine on at least two occasions.

Applicant graduated with this second bachelor's degree in June 2002, disassociated himself from his old college roommates by moving into his own place and stopped drug use immediately, knowing that it could have a negative impact on his career. He no longer associated with people who used drugs. He indicated: "I have found other values to be of greater importance than getting high to have fun. I have no further plans or desires to use marijuana."<sup>(11)</sup> Although his illegal conduct reflects adversely on his judgment, reliability, and trustworthiness, and suggests that he cannot be relied upon to safeguard classified information he has abstained from the use of any drugs since June 2002. His approximately three years of abstinence shows that his drug use was not recent, together with his credibly stated intention not to use drugs in the future, is sufficient to overcome the government's case under Guideline H.

I have considered all the evidence in this case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I am persuaded by the totality of the evidence in this case that Applicant has mitigated the security concerns caused by his drug involvement. Accordingly, subparagraphs 1.a through 1.c of the SOR are decided for Applicant.

## **FORMAL FINDINGS**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of

Enclosure 3 of the Directive, are:

Paragraph 1., Drug Involvement (Guideline H) FOR THE APPLICANT

Subparagraph 1.a For the Applicant

Subparagraph 1.b For the Applicant

Subparagraph 1.c For the Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Jacqueline T. Williams

Administrative Judge

1. ISCR Case No. 96-0277 (July 11, 1997) at 2.

2. ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
3. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).
4. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
5. ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
6. *Egan*, 484 U.S. at 531.
7. *Id.*
8. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
9. Executive Order 10865 § 7.
10. Directive, ¶ E2.A8.1.1.1.
11. Ex. 2 (Applicant's Sworn Statement, dated October 16, 2003), at 3.