

KEYWORD: Criminal Conduct; Drug; Personal Conduct; Financial

DIGEST: Applicant's extensive history of drug abuse, criminal conduct, financial irresponsibility, and falsifications rendered him an unsuitable candidate for a security clearance. His cocaine use and stated intent to continue using cocaine required denial of his clearance under 10 U.S.C. §986. Clearance denied.

CASENO: 03-25070.h1

DATE: 02/21/2006

DATE: February 21, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-25070

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's extensive history of drug abuse, criminal conduct, financial irresponsibility, and falsifications rendered him an unsuitable candidate for a security clearance. His cocaine use and stated intent to continue using cocaine required denial of his clearance under 10 U.S.C. §986. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 23 February 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of illegal drug use, criminal conduct, personal conduct, and financial considerations. [\(1\)](#) He answered the SOR 15 March 2005, and requested a decision without hearing. He did not respond to DOHA's 30 August 2005 File of Relevant Material (FORM). The record closed 21 November 2005, when his response was due. DOHA assigned the case to me 19 December 2005.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR, except for being indebted to the IRS (1.e. and 1.f.); accordingly, I incorporate the admissions as findings of fact.

Applicant is a 39-year-old material handler employed by a defense contractor since May 2001. He seeks access to classified information, but has not previously held a clearance. He has an extensive history of drug abuse, criminal conduct, and financial difficulties, much of which he sought to keep from the government.

Applicant used marijuana from 1979 to 1984. He tried amphetamines on a few occasions in 1984. However, his drug of choice was cocaine, which he used 2-3 times per month from 1989 to at least May 2003. He generally bought the cocaine he used. He intends to continue to use cocaine. In addition, he was arrested in February 1995 for possession and transportation of marijuana. He was also arrested in June 1995 and July 2000 for possessing drug paraphernalia.

Applicant was arrested and/or charged with various offenses 21 times between November 1983 and October 2001. By the time he was 22, he had ten arrests, most of them minor alcohol-related incidents: drunk in public, urinating in public, minor in possession of alcohol or similar alcohol possession charges. He was also charged with shoplifting, false reporting, and leaving the scene of an accident. Applicant attributes this criminal involvement to his immaturity and hanging out with the wrong crowd after his dad died when Applicant was 10 years old. However, Applicant has as many arrests after age 22 (11) as he had before. Between November 1990 and October 2001, he was arrested six times for domestic violence, one of which was dismissed when it developed that Applicant was more victim than assailant. He was also arrested three times between October 1997 and July 2000 for writing bad checks, and DUI in February 1995.

Applicant and his wife have been prone to financial problems almost from the start of their marriage in 1989. They filed for Chapter 13 bankruptcy protection in September 1991, October 1994, and June 1995. Each time, their plan was dismissed for failure to make the required payments. Applicant and his wife filed for Chapter 7 bankruptcy protection in January 1997 and were ultimately discharged of nearly \$59,000.00 in debt in May 1997. Despite this, Applicant's financial troubles resurfaced. He currently has 11 delinquent accounts totaling over \$3,500.00 that he is not paying on, despite a May 2003 personal financial statement showing positive cash flow of \$1,318.00 per month. He is also indebted to the IRS for tax years 1998 and 1999 for more than \$2,900.00. He claims to be making installment payments to the IRS, but provided no corroboration.

When Applicant completed his clearance application in July 2001, he failed to report his use of illegal drugs within the last seven years (question 27), and failed to report the full extent of his delinquent accounts (questions 38 and 39). In his May 2003 sworn statement, he categorically stated he did not use illegal drugs and had used marijuana experimentally during high school, the last time in 1984 before he graduated. He offered to take a polygraph to prove his claims.

During a pre-polygraph interview in June 2003, Applicant explained his use of marijuana between 1979 and 1984, and his use of amphetamines in 1984. He also revealed being arrested for possession of marijuana in February 1995. He acknowledged falsifying his drug history during his May 2003 interview and asserted he had been involved with no other illegal drugs.

During a post-polygraph interview in June 2003 (after being confronted with unsatisfactory charts), Applicant disclosed his ongoing use of cocaine as summarized above, and acknowledged falsifying his drug history during the earlier interviews. He did not tell the truth because he knew his clearance would be denied if he did.

POLICIES AND BURDEN OF PROOF

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline H (Drug Involvement), Guideline J (Criminal Conduct), Guideline E (Personal Conduct), and Guideline F (Financial Considerations) .

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government. ⁽²⁾

CONCLUSIONS

The government established a Guideline H case, and the Applicant did not mitigate the security concerns. Applicant has used illegal drugs since 1979, and has used cocaine on a regular basis since 1989.⁽³⁾ During this time, he purchased cocaine for his personal use.⁽⁴⁾ Furthermore, his use of cocaine is recent, and he has stated an intent to use cocaine in the future.⁽⁵⁾ Clearly, the illegality of the conduct does not affect Applicant's decision to use illegal drugs. In addition, the provisions of 10 U.S.C. §986 require that no clearance be granted to an applicant who is a current user of drugs. This Applicant was currently using cocaine when last interviewed by the government in June 2003 and stated an intent to continue to use cocaine in the future. He did not retreat from that position in his answer to the SOR. Under the circumstances, I must conclude that Applicant is a current user of illegal drugs, and consequently, ineligible for a clearance under the statute.

Further, Applicant meets none of the mitigating conditions for drug involvement. His drug use is recent.⁽⁶⁾ It is not isolated or aberrational.⁽⁷⁾ He has not demonstrated an intent to refrain from drug use in the future, indeed he has done the opposite.⁽⁸⁾ Accordingly, I conclude Guideline H against Applicant.

The government established a Guideline J case, and the Applicant did not mitigate the security concerns. He has 21 arrests over the last 22 years.⁽⁹⁾ While some of the arrests may be viewed as less significant and somewhat dated, the most serious offenses, particularly the domestic violence charges, have all occurred since 1990. None of the Guideline J mitigating factors apply. His conduct is recent,⁽¹⁰⁾ not isolated,⁽¹¹⁾ and there is little evidence of successful rehabilitation.⁽¹²⁾ Further, Applicant's multiple falsifications on his clearance application and during subject interviews in May and June 2003 violated 18 U.S.C. §1001. Accordingly, I conclude Guideline J against Applicant.

The government established a Guideline E case and Applicant did not mitigate the security concerns. He deliberately concealed his cocaine use and his delinquent accounts from his clearance application.⁽¹³⁾ He continued to misrepresent his drug abuse history in a May 2003 sworn statement and during a pre-polygraph interview in June 2003.⁽¹⁴⁾ He did not reveal the full extent of his cocaine use until confronted during a post-polygraph interview. Further, none of the Guideline E mitigating conditions apply. The concealed information was relevant to a clearance decision.⁽¹⁵⁾ The falsifications were not isolated, they were recent, and the Applicant did not provide the correct information voluntarily.⁽¹⁶⁾ He did not correct the falsification before being confronted with it.⁽¹⁷⁾ There is no evidence suggesting Applicant received bad advice about what he was required to disclose on his clearance application.⁽¹⁸⁾

Applicant's conduct demonstrates a lack of candor required of cleared personnel. The government has an interest in examining all relevant and material adverse information about an Applicant before making a clearance decision. The government relies on applicants to truthfully disclose that adverse information. Further, an applicant's willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the government relies on in order to perform damage assessments and limit the compromise of classified information. Applicant's conduct suggests he is willing to put his personal needs ahead of legitimate government interests. I conclude Guideline J against Applicant.

The government established a Guideline F case, and Applicant did not mitigate the security concerns. Applicant tried Chapter 13 bankruptcy three times and failed each time because he could not or did not keep up the required payments. Although he was discharged of nearly \$59,000.00 in debt in a Chapter 7 bankruptcy discharge in May 1997, by February 2005 he had over \$6,000.00 in delinquent debt acquired after his bankruptcy discharge.⁽¹⁹⁾ He has offered no credible explanation of how his finances deteriorated so quickly after his discharge. He offers no explanation why he has undertaken no repayment efforts, despite the apparent ability to do so.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent⁽²⁰⁾ and not isolated;⁽²¹⁾ indeed they appear to be ongoing. He has not demonstrated that his financial problems are due to circumstances beyond his control.⁽²²⁾ There is no evidence that he has sought credit counseling or otherwise brought the problem under control.⁽²³⁾ Finally, he has made no effort to contact his creditors to arrange repayment schedules for his debts, despite apparently having the means to do so.⁽²⁴⁾ I conclude Guideline F against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline H: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: Against Applicant

Subparagraph d: Against Applicant

Subparagraph e: Against Applicant

Subparagraph f: Against Applicant

Subparagraph g: Against Applicant

Subparagraph h: Against Applicant

Subparagraph i: Against Applicant

Paragraph 2. Guideline J: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: Against Applicant

Subparagraph d: Against Applicant

Subparagraph e: Against Applicant

Subparagraph f: Against Applicant

Subparagraph g: Against Applicant

Subparagraph h: Against Applicant

Subparagraph i: Against Applicant

Subparagraph j: Against Applicant

Subparagraph k: Against Applicant

Subparagraph l: Against Applicant

Subparagraph m: Against Applicant

Subparagraph n: Against Applicant

Subparagraph o: Against Applicant

Subparagraph p: Against Applicant

Subparagraph q: Against Applicant

Subparagraph r: Against Applicant

Subparagraph s: Against Applicant

Subparagraph t: Against Applicant

Subparagraph u: Against Applicant

Subparagraph v: Against Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: Against Applicant

Subparagraph d: Against Applicant

Subparagraph e: Against Applicant

Subparagraph f: Against Applicant

Paragraph 4. Guideline F: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: Against Applicant

Subparagraph d: Against Applicant

Subparagraph e: Against Applicant

Subparagraph f: Against Applicant

Subparagraph g: Against Applicant

Subparagraph h: Against Applicant

Subparagraph i: Against Applicant

Subparagraph j: Against Applicant

Subparagraph k: Against Applicant

Subparagraph l: Against Applicant

Subparagraph m: Against Applicant

Subparagraph n: Against Applicant

Subparagraph o: Against Applicant

Subparagraph p: Against Applicant

Subparagraph q: Against Applicant

Subparagraph r: 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. Clearance denied.

John Grattan Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
3. E2.A8.1.1.1. 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.

- E2.A8.1.2.1. Any drug abuse (see above definition); E2.A8.1.2.2. Illegal drug possession, including . . . purchase,
4. E2.A8.1.2.2. Illegal drug possession, including. . .purchase, . . .
5. E2.A8.1.2.5. . . .Recent drug involvement,. . .or an expressed intent not to discontinue use, will almost invariably result in an unfavorable determination.
6. E2.A8.1.3.1. The drug involvement was not recent;
7. E2.A8.1.3.2. The drug involvement was an isolated or aberrational event;
8. E2.A8.1.3.3. A demonstrated intent not to abuse any drugs in the future;
9. E2.A10.1.2.1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged; E2.A10.1.2.2. A single serious crime or multiple lesser offenses.
10. E2.A10.1.3.1. The criminal behavior was not recent.
11. E2.A10.1.3.2. The crime was an isolated incident.
12. E2.A10.1.3.6. There is clear evidence of successful rehabilitation.
13. E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;
14. E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination;
15. E2.A5.1.3.1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability;
16. E2.A5.1.3.2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;
17. E2.A5.1.3.3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts;
18. E2.A5.1.3.4. Omission of material facts was caused or significantly contributed by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided;
19. E2.A6.1.2.1 A history of not meeting financial obligations; E2.A6.1.2.3 Inability or unwillingness to satisfy debts;
20. E2.A6.1.3.1 The behavior was not recent;
21. E2.A6.1.3.2 It was an isolated incident;
22. E2.A6.1.3.3 The conditions that resulted n the behavior were largely beyond the person's control. . . ;
23. E2.A6.1.3.4 The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;
24. E2.A6.1.3.6 The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.