

KEYWORD: Drugs; Personal Conduct; Criminal Conduct

DIGEST: Applicant is a 56-year-old employee of a defense contractor who seeks renewal of his security clearance. He began to use marijuana in 1986 at age 37. He continued to use it intermittently over the next 15 years despite being arrested twice for possessing the drug. During this time, Applicant repeatedly made false official statements on security clearance application forms by denying his drug abuse. Applicant was arrested for drug possession for the third time in 2001, but completed a drug rehabilitation program to avoid criminal prosecution. Considering Applicant's long history of marijuana use, even after being arrested twice, and his repeated false statements on his security clearance applications, I conclude Applicant has not mitigated the security concerns arising from his drug abuse, his personal conduct, or his criminal conduct. Clearance is denied.

CASENO: 03-00763.h1

DATE: 09/28/2004

DATE: September 28, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-00763

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL J. BRESLIN**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 56-year-old employee of a defense contractor who seeks renewal of his security clearance. He began to use marijuana in 1986 at age 37. He continued to use it intermittently over the next 15 years despite being arrested twice for possessing the drug. During this time, Applicant repeatedly made false official statements on security clearance application forms by denying his drug abuse. Applicant was arrested for drug possession for the third time in 2001, but completed a drug rehabilitation program to avoid criminal prosecution. Considering Applicant's long history of marijuana use, even after being arrested twice, and his repeated false statements on his security clearance applications, I conclude Applicant has not mitigated the security concerns arising from his drug abuse, his personal conduct, or his criminal conduct. Clearance is denied.

**STATEMENT OF THE CASE**

On March 10, 2001, Applicant submitted a security clearance application. 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 March 25, 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, Guideline E, Personal Conduct, and Guideline J, Criminal Conduct, of the Directive.

Applicant answered the SOR in writing on April 12, 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 June 28, 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 July 9, 2004. By letter dated July 30, 2004, he provided additional materials for consideration. The case was assigned to me on August 31, 2004.

### FINDINGS OF FACT

Applicant admitted all the factual allegations under Guidelines H and E. Item 2, Applicant's Answer to SOR, dated April 12, 2004, at 2-5. 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 56 years old, and is employed by a defense contractor. Item 4, Security Clearance Application, dated March 10, 2001, at 1, 3. He seeks renewal of his security clearance.

Applicant has worked for the U.S. Government in some capacity for over 30 years. Item 2, *supra*, at 1. He served in the U.S. armed forces between 1966 and 1970, and received an honorable discharge. Item 4, *supra*, at 6, 7. He then worked for a government agency for seven years. Item 2, *supra*, at 1. As an employee of a defense contractor, he has served government agencies since about 1985. *Id.* He has held a variety of positions requiring trust and responsibility. Item 2, *supra*, at 6-11; Additional Materials, at 2-4. Applicant received security clearances in 1989 and 1996. Item 2, *supra*, at 3. His duty performance for the defense contractor garnered praise from clients, co-workers, and supervisors. Item 2, *supra*, at 6-11.

Applicant admits using marijuana, with varying frequency, between 1986 and February 2001. Item 2, *supra*, at 2. He began using marijuana in 1986, when he was about 37 years old. Item 5, Statement of Applicant, dated September 11, 2003, at 2. He used marijuana about three or four times between 1986 and 1994. *Id.*

In 1988, Applicant purchased a small bag of marijuana from a dealer on a street corner. *Id.* Both the dealer and Applicant were arrested, but Applicant was released with a warning. *Id.* Thereafter, he continued to smoke marijuana.

On November 30, 1988, Applicant executed a Personnel Security Questionnaire (DD Form 48) as part of the process to obtain a security clearance. Item 2, *supra*, at 5. Question 15a asked whether Applicant had ever used marijuana. *Id.* Applicant falsely answered "No." Applicant received a security clearance in 1989. *Id.* at 3.

On January 21, 1991, Applicant executed a Personnel Security Questionnaire. *Id.* at 4. Question 22a asked whether Applicant had ever used marijuana. *Id.* Applicant falsely answered "No."

On August 15, 1994, Applicant executed a National Agency Questionnaire (DD Form 398-2). Question 20a asked whether Applicant had ever used marijuana. *Id.* Applicant falsely answered "No."

In October 1994, Applicant was arrested by U.S. Park Police for possessing a open container of an alcoholic beverage in a park. *Id.*; Item 6, Statement of Applicant, dated February 22, 2002, at 2. A search of his car revealed a small bag of marijuana in Applicant's possession. Item 6, *supra*, at 2. Authorities charged Applicant with the open container violation and the possession of marijuana, however a judge dismissed the marijuana charge due to an illegal search. *Id.* Applicant pled guilty to the open container violation. *Id.*

Between 1994 and 2001, Applicant's use of marijuana increased. He used marijuana about every other weekend. *Id.* He purchased it from a local bakery. *Id.*

In February 2001, local police stopped Applicant near his home for speeding. *Id.* As the police officer tested Applicant for drunk driving, he discovered a small bag of marijuana in Applicant's possession. *Id.* Authorities charged Applicant with possession of marijuana. Applicant agreed to enter a county intervention program for substance abusers. *Id.* He successfully completed the 12-week program. *Id.* As a result, authorities dropped the marijuana possession charge. *Id.* Applicant asserts he has not used marijuana since February 2001.

On March 10, 2001, Applicant completed an SF 86, Security Clearance Application. Item 4, *supra*, at 9. Question 24a on that form asked whether Applicant had used any controlled substance within the last seven years. Item 4, *supra*, at 8. Applicant answered that he had used marijuana once in 1994 and once in February 2001. Applicant deliberately omitted information that he had used marijuana on many other occasions within the preceding seven years. Item 2, *supra*, at 1, 2.

Question 24b on the SF 86 asked whether Applicant had ever used a controlled substance while holding a security clearance. Item 4, *supra*, at 8. Applicant falsely answered "No" to that question. *Id.* He deliberately concealed the fact that he had used marijuana after receiving security clearances in 1989 and 1996. Item 2, *supra*, at 4.

## 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.** 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. Directive, ¶ E2.A8.1.1.1.

**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 person may not properly safeguard classified information. Directive, ¶ E2.A5.1.1.

**Guideline J, Criminal Conduct.** A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. Directive, ¶ E2.A10.1.1.

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 a disqualifying condition 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 to extensive use of marijuana between 1986 and 2001. This raises significant 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. Applicant used marijuana on a regular basis through February 2001. The criminal charges arising from his possession of marijuana at that time were not resolved until April 2002, following Applicant's completion of a mandated rehabilitation program. I conclude Applicant's drug abuse was recent, therefore this mitigating condition does not apply.

It may also be mitigating where the drug abuse in question was an isolated or aberrational event. Directive, ¶ E2.A8.1.3.2. The evidence in the record and Applicant's admissions make it clear that the drug abuse was not an isolated event, nor was it unusual or otherwise out of character for Applicant. To the contrary, Applicant used marijuana continuously for many years, even after being arrested for illegally possessing the drug, and after repeatedly lying on security clearance applications about his illegal drug use.

It may also be mitigating where an applicant demonstrates an intent not to abuse drugs in the future. Directive, ¶ E2.A8.1.3.3. After his last arrest for possession of marijuana, Applicant completed a 12-week education program on substance abuse. He declares that he will never use illegal drugs again. In assessing the applicability of this mitigating factor, I considered all the surrounding circumstances. I note that Applicant began using marijuana at a mature age. He continued to use the drug even after being arrested twice for possessing the drug. He also continued to use it knowing that it could disqualify him from holding a security clearance necessary to his job. Applicant's history demonstrates that he has consistently placed his desire to smoke marijuana ahead of his duty to obey the law or his security obligations. Moreover, Applicant has repeatedly lied about his drug use in order to protect his employment. I conclude that his declaration of intent to refrain from illegal drugs in the future is not credible. This mitigating condition does not apply.

It may also be mitigating where an applicant successfully completed a drug treatment program, including rehabilitation and aftercare requirements, and a credentialed medical professional gives a favorable prognosis. It is not clear whether the 12-week education program would qualify; in any event, there is no evidence that a credentialed medical professional has a favorable prognosis for Applicant's recovery from drug abuse.

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 abuse.

### **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 " may be disqualifying. The Government's documentary matters and Applicant's admissions are substantial evidence that Applicant deliberately omitted and falsified material facts on official forms used to determine his eligibility for a security clearance. Applicant lied about his wrongful use of marijuana on security clearance application forms in November 1988, January 1991, August 1994, and March 2001. The fact of his drug use and the nature, extent, and recency of that use, were material and relevant to the issue of his fitness to hold a security clearance. Applicant's extensive history of dishonesty in providing information regarding his fitness for a security clearance raises substantial questions about his trustworthiness.

It may be mitigating where the falsification was an isolated incident, it was not recent, and the applicant subsequently provided correct information voluntarily. Directive, ¶ E2.A5.1.3.2. It may also be mitigating where an applicant made prompt, good-faith efforts to correct the falsification before being confronted with the facts. Directive, ¶ E2.A5.1.3.3. I find these mitigating conditions do not apply here, however. Applicant's false statements on his security clearance application were regular and recurring, rather than an isolated incident. His false statement in March 2001 related to the clearance now before the government, therefore I conclude they were recent. Finally, Applicant only provided correct information after being confronted by investigators.

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

### **Guideline J, Criminal Conduct.**

The Government's documentary matters and Applicant's admissions are substantial evidence of disqualifying conditions under the Directive, specifically "admission of criminal conduct, regardless of whether the person was formally charged," under ¶ E2.A10.1.2.1, and "serious crime" under ¶ E2.A10.1.2.2. Applicant repeatedly made deliberately false statements on his security application forms, as discussed above. Under 18 U.S.C. § 1001, it is a criminal offense to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the executive branch of the Government of the United States. Each false statement made by Applicant on his security clearance applications violated 18 U.S.C. § 1001 and constituted a serious offense.

None of the mitigating factors set out in the Directive, ¶ E2.A10.1.3, apply here. Some of the false statements were recent. Applicant lied about his drug use repeatedly-it was not an isolated event. Applicant was not pressured or coerced into making the false statements; instead, he did it because he recognized that revealing his drug abuse could jeopardize his ability to obtain a security clearance necessary for his job.

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

### **FORMAL FINDINGS**

My conclusions as to each allegation in the SOR are:

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

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

Subparagraph 2.e: Against Applicant

Paragraph 3, Guideline J: AGAINST APPLICANT

Subparagraph 3.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**