

DATE: November 29, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-04314

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 39-year-old program analyst who has worked for a federal contractor since 2000. He held a secret security clearance from 1991 to 1997, and obtained a top secret clearance in 2001. Applicant used drugs from 1984 to 1998, concurrent with holding a secret clearance. He failed to divulge his past drug involvement on his security clearance application. He made false statements regarding his drug history. Applicant failed to mitigate the security concerns under Guideline H, drug involvement, and Guideline E, personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On February 28, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline H, drug involvement, and Guideline E, personal conduct.

In a sworn statement dated March 19, 2005, Applicant responded to the SOR allegations, admitting all the allegations, except subparagraph 2.c. Applicant elected to have his case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on September 1, 2005. The FORM was received by Applicant on September 6, 2005. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He provided additional material without objection and it was made part of the record. The case was assigned to me on October 13, 2005.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and statements, I make the following findings of fact:

Applicant is a 39-year-old program analyst who has worked for a federal contractor since 2000. Applicant is single and

was a member of his state's Air National Guard unit from 1989 to 1997. Applicant held a security clearance from 1991 to 1997, while in the Air National Guard. He also held a top secret security clearance in 2001, and was denied access to sensitive compartmented information (SCI) in 2003.⁽²⁾

Applicant used marijuana , with varying frequency, from 1984 to June 29, 1998. In the late 1980s, Applicant purchased marijuana on two occasions for his personal use. He provided money to a friend to purchase marijuana for him to use.⁽³⁾ Applicant used marijuana while holding a security clearance with the Department of Defense.

On Applicant's security clearance application (SCA) dated November 21, 2000, he answered "No" to Question 27 (*Your Use of Illegal Drugs and Drug Activity-Illegal Use of Drugs-Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used a controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.) hallucinogenics (LSD, PCP, etc.), or prescription drugs?*). This answer was false in that he had used drugs during the time frame requested.

Applicant also answered "No" to Question 28 (*Your use of Illegal Drugs and Drug Activity-Use of Sensitive Positions. Have you EVER illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a position directly or immediately affecting public safety?*). Applicant's answer was false in that he held a security clearance at the time he was using drugs.

No evidence was provided to substantiate that Applicant had access to SCI in 2001. No corroborating evidence was provided to substantiate whether Applicant used drugs in August 2001.⁽⁴⁾

Applicant used drugs while a member of his state's Air National Guard Unit. In Applicant's sworn answer he admits to using drugs from 1984 to 1998.⁽⁵⁾ In Applicant's sworn statement of April 6, 2004 he states, "I began using marijuana after graduating from high school during June [19] 84. From approximately Jun[e] [19]84 to 1985 I used marijuana approximately five to ten times."⁽⁶⁾ Applicant went on to say, "From 1985 to 1997 I used marijuana approximately twice yearly, exact times unrecalled (sic). From 1989 to 1991 I did not use marijuana because I was in training for the ... Air National Guard."⁽⁷⁾ Applicant stated, "I held a security clearance with ... from 1991 to 1997. My last use of marijuana was during the end of 1997. I did not list my drug use on my SF 86 because I did not view myself as a real drug user as my use was sporadic and infrequent. I did not view such limited use as a national security concern."⁽⁸⁾ Applicant does not intend on using drugs in the future.⁽⁹⁾

Applicant appealed his denial of access to SCI.⁽¹⁰⁾ In his denial letter Applicant states, "I have not used marijuana since 1994 and not the August 2001 date..."⁽¹¹⁾ Applicant then claims that "All of the marijuana use was before the 7-year time shown in question 27 of the SF 86."⁽¹²⁾ Applicant claimed he was pressured into admitted additional drug usage. In Applicant's sworn answer to the SOR, he states "I have admitted using marijuana between the approximate dates of 1989 to June 29, 1998. The date of August of 2001 is incorrect."⁽¹³⁾ Applicant's numerous versions of when his used marijuana are inconsistent.

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, drug involvement, and Guideline E, personal conduct considerations, with their respective DC and MC, apply 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 determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽¹⁴⁾ The government has the burden of proving controverted facts.⁽¹⁵⁾ The burden of proof is something less than a preponderance of evidence.⁽¹⁶⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.⁽¹⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁸⁾

No one has a right to a security clearance⁽¹⁹⁾ and the "clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽²⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽²¹⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽²²⁾ 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 the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline H-Drug Involvement is a security concern because 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.

Guideline E-Personal Conduct is a security concern when an individual's conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that could indicate that the person may not properly safeguard classified information.

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. The government has established a *prima facie* case for disqualification under Guideline H and Guideline E.

Based on all the evidence, Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1 (*Any drug abuse*⁽²³⁾), and DI DC E2.A8.1.2.2 (*Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*) apply. Applicant used marijuana from 1984 to 1998, and purchased drugs on two occasions for his own personal use.

I considered all the mitigating conditions and especially considered Drug Involvement Mitigating Condition (DI MC) E2.A8.1.3.1 (*The drug involvement was not recent*); DI MC E2.A8.1.3.2 (*The drug involvement was an isolated or aberrational event*); DI MC E2.A8.1.3.3 (*A demonstrated intent not to abuse any drugs in the future*); and DI MC E2.A8.1.3.4 (*Satisfactory completion of a prescribed drug treatment program including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional.*) I conclude Applicant's last admitted drug use was in 1998, a period of approximately seven years ago. I find his drug involvement is not recent. DI MC E2.A8.1.3.1 applies. I find because of the 14 year period Applicant used marijuana that it was not an isolated or aberrational event. DI MC E2.A8.1.3.2 does not apply. No information was provided whether Applicant attended any drug treatment program, therefore DI MC E2.A8.1.3.4 does not apply. Applicant stated he does not intend to use drugs in the future and presumably has not used them since 1998, therefore DI MC E2.A8.1.3.3 applies. I have considered the general disqualifying and mitigating guidelines under E2.2. Applicant's drug

usage may be mitigated by a passage of time and his intent not to use drugs in the future, however Applicant breached a special trust when he used drugs while he held a security clearance. This was not one time breach, but happened each time he used marijuana from 1991 to 1997. I find this factor outweighs the other mitigating factors regarding Applicant's drug involvement. Applicant failed to mitigate the security concern regarding his drug involvement.

Based on all the evidence, Personal Conduct Disqualifying Condition (PC DC) 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, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*), PC DC 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 trustworthy determination*), PC DC E2.A5.1.2.4 (*Personal conduct or concealment of information that increases an individual vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail*), and PC DC E2.A5.1.2.5 (*A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency*), apply in this case.

Applicant deliberately did not divulge any of his drug history on his November 21, 2000 SCA. He failed to provide the information until confronted with the facts by an investigator. Applicant made sworn statements regarding his drug use that were inconsistent, false, and misleading. He attempted to minimize his involvement. Applicant's actions show a pattern of dishonesty. Of utmost concern is that Applicant used drugs while he held a security clearance and while a member of his state's Air National Guard Unit. Applicant has been trusted with a security clearance in the past and abused that trust by using drugs over a lengthy period of time, and then lying about it. Applicant's justification for not answering the SCA honestly because he did not think of himself as a drug abuser or a risk to national security reflects an attitude and inability to follow rules and procedures. Applicant's conduct and concealment of information increases his vulnerability to exploitation and coercion.

I considered all the mitigating conditions and specifically considered Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.2 (*The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*), PC MC E2.A5.1.3.3 (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*), and PC MC E2.A5.1.3.5 (*The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*). I conclude none of the mitigating conditions apply. Applicant falsified his SCA. He did not provide the correct information until confronted by an investigator. Applicant continued to change his story regarding his drug use, which shows the incident is not isolated. Applicant's actions show a consistent attempt to hide or minimize his past drug involvement which makes him especially vulnerable and unreliable. Applicant did not offer any information to show any steps he may have taken to reduce his vulnerability to coercion or exploitation. Applicant abused and violated the trust engendered to him when he was granted a security clearance by using drugs. It is apparent Applicant did not take his security clearance responsibilities seriously. When confronted, he continued to fabricate the extent of his drug use. Applicant's lack of honesty and questionable judgment make him a security risk. Applicant failed to mitigate the personal conduct security concerns.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered the whole person and I find Applicant failed to mitigate the security concerns regarding his drug involvement and personal conduct. Applicant's concealment and consistent disregard for the truth is a grave and serious concern that reflects poorly on his character and judgment. Therefore, I am persuaded by the totality of the evidence in this case that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guidelines H and E are decided against 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) AGAINST THE APPLICANT

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. Against the Applicant

Paragraph 2: Personal Conduct (Guideline E) AGAINST THE APPLICANT

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against the Applicant

Subparagraph 2.c. 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. Clearance is denied.

Carol. G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Item 5.
3. Item 6 at 3.
4. Item 6 provides a vague summary from an investigator evaluating Applicant's eligibility for access to SCI. The summary states that Applicant used marijuana once in August 2001 while holding a "Top Secret Sensitive Compartmented" security clearance. No other corroborating information was provided, such as a formal results of interview or signed statement. Therefore, I find there is insufficient evidence with regard to this portion SOR allegation 2.c.
5. Item 2.
6. Item 6
7. *Id.*
8. *Id.*
9. *Id.*
10. Item 8.
11. *Id.*

12. *Id.*

13. Item 2.

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

15. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.

16. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

17. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, ¶ E3.1.15.

18. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15.

19. *Egan*, 484 U.S. at 531.

20. *Id.*

21. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

22. Executive Order 10865 § 7.

23. E2A8.1.1.2.1 defines drug abuse as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.