

DATE: May 17, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-05176

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire,, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's abuse of marijuana from 1970 to August 2001 is not mitigated where Applicant used marijuana after obtaining a clearance in approximately 1980 and applying for an upgraded clearance in September 2001. Applicant's falsification of his September 2001 clearance application suggests he cannot be relied upon to tell the truth if it conflicts with his personal interest. Clearance denied.

STATEMENT OF THE CASE

Applicant appeals the 4 November 2003 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) [\(1\)](#) recommending denial or revocation of Applicant's clearance. Applicant answered the SOR and requested an administrative decision on the record on 25 November 2003. He did not respond to the Government's File of Relevant Material (FORM)-issued 30 December 2003; the record in this case closed 4 February 2004, the day the response was due at DOHA. The case was assigned to me on 15 April 2004 to decide if clearance should be granted, continued, denied, or revoked.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR; accordingly, I incorporate the admissions as findings of fact.

Applicant-a 50-year-old test engineer for a defense contractor-seeks to retain the clearance he has held since approximately 1980, working on "classified secret programs for nearly all of that time." (Answer).

Applicant has a long history of drug abuse dating back to approximately 1970. He used sporadically in high school. Between 1971 and 1980, he used marijuana more regularly, sometimes daily. Between 1970 and 1980, he bought user amounts of marijuana. He also tried LSD a few times. In 1975, while on active duty in the Army, [\(2\)](#) he was busted for marijuana possession in his barracks, an event he acknowledges hastened his departure from the military.

Applicant asserts that he stopped using marijuana in 1980, and resumed recreational use in 1996, continuing until August 2001 (Item 5). His Answer to the SOR acknowledges that he used marijuana occasionally during the 20 years before the subject interview in fall 2001 that revealed his drug history.⁽³⁾ He also acknowledged his failure to disclose his drug history on any of his earlier clearance applications.⁽⁴⁾

In September 2001, Applicant falsified his clearance application (Item 4) by failing to disclose either his past drug use or the fact that he had used during periods when he held a clearance. He claims he withheld this drug use because he did not think it significant. I find this claim unconvincing, as he knew from his military experience in 1975 that any suggestion of drug use could have a negative impact on his employment. Applicant's highest use of marijuana occurred from 1971 to 1980, yet the adjudicative record in this case contains no evidence of any consideration of that drug use, notwithstanding that Applicant went to work for his current employer in December 1980 and was quickly working on classified projects. His explanation lacks credibility. His self-serving statement demonstrates he clearly understood the drug questions, but rationalized a "no" answer, as he had apparently done during the previous 20 years. He did not disclose his drug abuse until confronted with a routine polygraph for his SCI access.

The record contains no evidence of Applicant's work record or character.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section 6.3. and in Enclosure 2 of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

DRUG INVOLVEMENT (GUIDELINE H)

E2.A8.1.1. The Concern:

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.A8.1.1.2. Drugs are defined as mood and behavior-altering substances.

E2.A8.1.1.2.1. Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants and hallucinogens); and

E2.A8.1.1.2.2. Inhalants and other similar substances,

E2.A8.1.1.3. Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

E2.A8.1.2 Conditions that could raise a security concern and may be disqualifying include:

E2.A8.1.2.1. Any drug abuse (see above definition);

E2.A8.1.2.2. Illegal drug possession...

E2.A8.1.2.5.... Recent drug involvement, especially following the granting of a security clearance, or an expressed intent not to discontinue use, will almost invariably result in an unfavorable determination.

E2.A8.1.3. Conditions that could mitigate security concerns include:

None.

PERSONAL CONDUCT (GUIDELINE E)

E2A5.1.1. The Concern: 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...

E2.A5.1.2. Conditions that could raise a security concern and may be disqualifying include:

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...;

E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator,...in connection with a personnel security or trustworthiness determination;

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

Burden of Proof

Initially, the government must prove controverted facts alleged in the SOR. If the government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. Where facts proven by the government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 513 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

The government has established its case under Guideline H and the Applicant has not mitigated the conduct. Applicant was an experimental abuser of marijuana from 1970-1971, a regular abuser from 1971-1980, and recreational abuser of marijuana from approximately 1980 to August 2001. He falsified a clearance application in September 2001 by concealing his drug abuse, as he apparently had during the 20+ years he had a secret clearance. When he went to work for his employer in 1980, he knew that his past drug use could create problems for him because he had been busted while in the Army. He had notice that drug use was against government policy, yet continued to use marijuana while cleared, both before and after he got his top secret clearance in October 1999. This use is inconsistent with a stated intent to refrain from use in the future. His use was recent, and neither isolated or aberrational. Clearly, the illegality of the conduct did not affect his decision to use marijuana.

Although Applicant now vows to refrain from marijuana abuse because he now realizes how significant the government considers his occasional use, I find that vow neither credible nor sufficient to constitute a demonstrated intent to refrain from drug abuse in the future, particularly given the circumstances of Applicant's past use. Accordingly, I resolve Guideline H against Applicant.

The government has established its case under Guideline E. Applicant knew he had used drugs within the last 7 years

and deliberately withheld that information. More troubling, it appears that he had consistently concealed his drug use during earlier background investigation, and only came clean because he was undergoing a routine polygraph for SCI access. Applicant has shown he lacks the candor required of those with access to classified information. 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 resolve Guideline E against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline H: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: 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.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6, as amended (Directive)
2. A tour that lasted about 10 months.
3. Applicant revealed his drug use during a polygraph examination being conducted to determine his eligibility for access to Special Compartmented Information (SCI), having obtained his top secret clearance in October 1999.
4. By his own admission, Applicant has been cleared since approximately December 1980. The SOR contains no allegations of any earlier falsifications of his drug abuse history, nor does the FORM contain any evidence of prior disclosure. Applicant's Answer states that he used marijuana socially during the 20 years before his SCI interview and had never disclosed that use before, thinking it unimportant.