

KEYWORD: Drugs; Personal Conduct; Criminal Conduct

DIGEST: Applicant bought and used marijuana weekly from September 1998 to November 2001 and fortnightly from November 2001 to January 2003. He used LSD once in January 2003. He falsified his January 2003 clearance application by wilfully concealing this drug history. Clearance denied.

CASENO: 03-11575.h1

DATE: 07/30/2004

DATE: July 30, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-11575

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR.

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esquire, Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant bought and used marijuana weekly from September 1998 to November 2001 and fortnightly from November 2001 to January 2003. He used LSD once in January 2003. He falsified his January 2003 clearance application by wilfully concealing this drug history. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 20 October 2003 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of drug involvement, personal conduct, and criminal conduct⁽¹⁾. He answered the SOR 13 November 2003, and requested a decision without hearing. He did not respond to DOHA's 17 May 2004 File of Relevant Material (FORM). The record closed 19 July 2004, when the response was due. DOHA assigned the case to me 19 July 2004.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR, but denied intent to falsify his clearance application. I incorporate his admissions as findings of fact. He is a 20-year-old electrician employed by a defense contractor since August 2002. He has never applied for a clearance before.

When Applicant applied for a clearance in January 2003, he deliberately concealed his extensive drug abuse and drug purchases from September 1998 to January 2003. During a Defense Security Service interview in March 2003, he admitted deliberately omitting his drug abuse because he wanted to conceal it from his employer. He claimed he fully intended to disclose his drug abuse during his personal interview. However, while he disclosed his drug history during that interview, there is no evidence that he volunteered the information before being questioned or confronted. His

answer repeats this stated intent and claims he was too embarrassed to disclose his drug history.

Applicant used marijuana weekly from September 1998 to November 2001, spending about \$40.00 per week buying "quarter" bags. He mostly used alone, but sometimes shared with his friends. He used marijuana fortnightly from November 2001 to January 2003, buying a "quarter" bag every two or three weeks. Again, he mostly used alone, but sometimes shared with friends. He spent about \$2,000.00 on marijuana over this period. He claims he stopped using marijuana after he experienced a bad LSD trip in January 2003, the first and only time he used LSD. He says he intends to remain drug-free.

POLICIES

The Directive, Enclosure 2 sets forth adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each adjudicative 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, I conclude the relevant, applicable, adjudicative guidelines are Guideline H (Drug Involvement), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct).

BURDENS

A security clearance decision is intended to 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.

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, 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 Applicant did not mitigate the conduct. He bought and abused marijuana regularly from 1998 to 2003. (3) His use is recent. (4) While he now vows to remain drug free, in part because of the bad LSD trip in January 2003, that vow is neither credible nor sufficient to demonstrate 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 established a Guideline E and J case and Applicant did not mitigate the conduct. He deliberately concealed his drug history from the government. (5) His explanation is not credible and I conclude he intended to conceal this information from both the government and his employer. This conduct violated 18 U.S.C. §1001. (6) While he disclosed his drug history during his March 2002 interview, he did not disclose the information before then and no evidence suggests he voluntarily disclosed the information before questioning or confrontation.

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 resolve Guideline E and J 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

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Paragraph 3. Guideline J: AGAINST THE APPLICANT

Subparagraph a: 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 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.A8.1.2.1. Any drug abuse. . .; E2.A8.1.2.2. Illegal drug possession, including. . . purchase. . .
4. E2.A8.1.2.5.... Recent drug involvement. . . will almost invariably result in an unfavorable determination.
5. 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. . .;

6. E2.A10.1.2.1. Allegations or admission of criminal conduct, regardless of whether the person was formally charged;
E2.A10.1.2.2. A single serious crime or multiple lesser offenses.