

KEYWORD: Drugs; Personal Conduct; Criminal Conduct

DIGEST: Applicant used marijuana and cocaine on various occasions from 1987 to March 2002. Applicant used cocaine and marijuana after being granted a security clearance in 1999. Concerns about her illegal drug use have been mitigated by the absence of illegal drug use in over four years and her assurances that she does not intend to use illegal drugs in the future. However, her deliberate pattern of minimizing her drug use on two security clearance applications and in a signed, sworn statement provided during her background investigation is not mitigated and raises security concerns about her judgment and reliability. Security concerns based on personal conduct and criminal conduct are not mitigated. Clearance is denied.

CASENO: 03-12089.h1

DATE: 03/30/2006

DATE: March 30, 2006

---

In re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 03-12089

**DECISION OF ADMINISTRATIVE JUDGE**

**ERIN C. HOGAN**

**APPEARANCES**

**FOR GOVERNMENT**

Nichole Noel, Esq., Department Counsel

Fahryn Hoffman, Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant used marijuana and cocaine on various occasions from 1987 to March 2002. Applicant used cocaine and marijuana after being granted a security clearance in 1999. Concerns about her illegal drug use have been mitigated by the absence of illegal drug use in over four years and her assurances that she does not intend to use illegal drugs in the future. However, her deliberate pattern of minimizing her drug use on two security clearance applications and in a signed, sworn statement provided during her background investigation is not mitigated and raises security concerns about her judgment and reliability. Security concerns based on personal conduct and criminal conduct are not mitigated. Clearance is denied.

### **STATEMENT OF THE CASE**

On April 19, 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. <sup>(1)</sup> The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline H, Drug Involvement; Guideline E, Personal Conduct; and Guideline J, Criminal Conduct.

In a sworn statement signed October 4, 2005, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on November 29, 2005. DOHA issued a notice of hearing on January 3, 2006, scheduling the hearing for January 26, 2006. The hearing was conducted as scheduled. The government submitted five exhibits that were marked as Government Exhibits (Gov Ex) 1-5. The exhibits were admitted into the record without objection. Applicant testified on her own behalf and submitted no exhibits. DOHA received the hearing transcript (Tr.) on February 6, 2006.

### **FINDINGS OF FACT**

In her SOR response, Applicant admits to the allegations in subparagraphs 1.b, 1.d, 1.e and 1.f under Guideline H. She denied the allegations in subparagraphs 1.a and 1.c and all allegations under Guideline E and Guideline J. Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 34-year-old project control/subcontracts administrator for a defense contractor.<sup>(2)</sup> She received a SECRET clearance in 1999 while employed as a contractor for the State Department.<sup>(3)</sup> She is currently applying for a TOP SECRET clearance. She married in October 2003 and is expecting her first child in ay 2006.<sup>(4)</sup>

On June 28, 1999, Applicant submitted a security clearance application (SF 86).<sup>(5)</sup> Question 27 of the application reads: **"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 any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbituates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?" She answered "No" to that question. She did not list the illegal drugs she used within 7 years of filling out her security clearance application.

On March 20, 2002, Applicant submitted another security clearance application.<sup>(6)</sup> She answered "Yes" in response to question 27.<sup>(7)</sup> She indicated that she had used marijuana on at least eight occasions from 1996 to present and had used cocaine once in July 2000.

Applicant answered "No" to question 28. **"Your Use of Illegal Drugs and Drug Activity - Use in 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 and immediately affecting public safety?" She did not mention her use of cocaine and marijuana while holding a security clearance.

On April 9, 2002, Applicant provided a signed, sworn statement to a Special Agent of the Defense Security Service.<sup>(8)</sup> She indicated that her first use of marijuana occurred in the fall of 1987 while in high school. Between 1987 and June 1989, she smoked marijuana about twice a month. From September 1989 to June 1990, she smoked marijuana about ten times. From 1990 to 1995, she smoked marijuana on average about twice a year. She smoked marijuana on one occasion between 1995 and 1996. She used marijuana once in 1999. Her last use of marijuana was in September 2001. She indicated that she used cocaine on three occasions between the summer of 1989 to June/July 2001. She also used LSD once while in high school.<sup>(9)</sup>

In conjunction with a polygraph, Applicant provided another signed, sworn statement to a Special Agent of the Defense Security Service on February 3, 2005.<sup>(10)</sup> In this statement, she indicated that she had snorted cocaine on six occasions.

In the summer of 1989 she used cocaine two times on the same day. In the fall of 1989, she used cocaine once. In the summer of 2001, she used cocaine on two occasions. On one occasion she used cocaine twice on the same day. She used cocaine once on the other occasion.<sup>(11)</sup> She also listed marijuana use as follows: from 1987 to 1992, once or twice a month; from 1992 to 1996 about ten times; one time between 1996 to 1998; once in 1999; once in 2000; and anywhere between five to ten times to as much as 15 times in the summer of 2001.<sup>(12)</sup> She purchased a small amount of marijuana on two occasions while in high school for her personal use. Her drug use occurred in social situations.<sup>(13)</sup>

Applicant admitted to providing false information on her June 28, 1999, security clearance application in response to question 27 regarding her illegal drug use because she believed she would not get a security clearance if she told the truth.<sup>(14)</sup> She also minimized her illegal drug use in response to question 27 on her March 21, 2002, security clearance application out of concern of not being cleared if she told the truth.<sup>(15)</sup>

She claims she answered "No" to question 28 on her March 21, 2002, security clearance application because she did not recall having a security clearance when filling out the application.<sup>(16)</sup>

Question 31 on her March 21, 2002, security clearance application states:

**Your Investigation Record - Investigations/Clearances Granted.** Has the United States Government ever investigated your background and/or granted you a security clearance? (If you can't recall the investigating agency and/or the security clearance received , enter (Y)es and follow instructions in the help text for the fields on the next screen. If you can't recall whether you've been investigated or cleared, enter (N)o.).<sup>(17)</sup>

In response to question 31 on her March 21, 2002, security clearance application, Applicant answered "Yes" and indicated that she was granted a SECRET clearance from the State Department on February 1, 1999.<sup>(18)</sup>

In her February 3, 2005, statement Applicant admitted to deliberately minimizing the amount and frequency of her cocaine and marijuana use in her April 9, 2002, statement provided during her previous background investigation interview. She indicated:

When I was interviewed on 9 Apr 02 by Defense Security Service, I purposefully minimized the amount and frequency of my marijuana and cocaine use. I believed that if I told the truth, I would not get my security clearance. I had recalled almost all of my drug use during the interview but decided to admit only a portion of it to increase my chances of getting cleared. I also provided false information concerning my drug use in the sworn statement I gave during that interview, by not disclosing all of it.<sup>(19)</sup>

At hearing, Applicant testified that her last use of marijuana occurred in October 2001. <sup>(20)</sup> She claimed she did not intentionally falsify her security clearance applications. <sup>(21)</sup> She claimed the Special Agent interviewing her suggested that she did not list the fact that she used illegal drugs while holding a security clearance because she was scared she would not get a clearance. She claimed this information was written in her February 3, 2005, statement at the Special Agent's suggestion. <sup>(22)</sup> She claimed she had no idea what a security clearance was at the time she filled out her security clearance applications. <sup>(23)</sup>

Appellant has no intention of using illegal drugs in the future. <sup>(24)</sup> She is expecting her first child in May and has changed her lifestyle. She claims she has the highest standard of ethics and honor. <sup>(25)</sup> She now understands the importance of a security clearance and is very sorry about her past mistakes. <sup>(26)</sup> She indicates that she excels in her current job. No other information was provided pertaining to her current job performance.

## POLICIES

The President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." (*Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

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.)

**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 this adjudicative guideline, 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.)

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.

## 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 Guidelines H, Drug Involvement; E, Personal Conduct; and J, Criminal Conduct.

## Guideline H - Drug Involvement

While not a habitual user, Applicant used illegal drugs (cocaine, marijuana) on various occasions between 1987 to October 2001. On two occasions while in high school, Applicant purchased marijuana for her own personal use. On other occasions, Applicant used illegal drugs while in social situations. Under the Drug Involvement Guideline, Disqualifying Condition (DI DC) E2.A8.1.2.1: (*Any drug abuse*) applies as well as DI DC E2.A8.1.2.2: (*Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.*)

Security concerns based on possession and use of illegal drugs can be mitigated. I find that Drug Involvement Mitigating Condition (DI MC) E2.A8.1.3.1: (*The drug involvement was not recent*) and DI MC E2.A8.1.3.3 (*A demonstrated intent not to abuse any drugs in the future*) applies. Applicant has not used illegal drugs since October 2001. She married in October 2003 and is expecting her first child. She no longer associates with people who use illegal drugs. Her priorities have changed. The security concerns raised by Applicant's use of illegal drugs are mitigated.

## Guideline E - Personal Conduct

Applicant's deliberate falsification of her security clearance applications submitted on June 28, 1999, and March 20, 2002, supports the application of 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*). Applicant admitted in her February 3, 2005, signed, sworn statement that she minimized her drug use out of concern that she might not get a security clearance. She denied using any illegal drugs within seven years of submitting her June 28, 1999, security clearance application. She minimized the extent her illegal drug use in her March 20, 2002, security clearance application. Although she denied intentionally falsifying her security clearance applications during the hearing, I find her February 3, 2005, signed, sworn statement to be more credible than her testimony during the hearing.

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 personal security or trustworthiness determination*) applies with respect to Applicant's deliberate minimization of the extent of her illegal drug use in her signed, sworn statement provided to the Defense Security Service on April 9, 2002. She admitted in her February 3, 2005, signed, sworn statement that she minimized the extent of her illegal drug use in her April 2002 statement in order to increase her chances of getting a security clearance. I find her actions were deliberate and the information about her illegal drug use was relevant and material. As such, PC DC E2.A5.1.2.3 applies.

Considering the Personal Conduct Mitigating Conditions (PC MC), only PC MC E2.A5.1.3.3: (*The individual made*

*prompt, good-faith efforts to correct the falsification before being confronted with the facts*) has the potential to apply to the facts of this case. I find that it does not apply. Applicant deliberately falsified two security clearance applications and one signed, sworn statement provided to the Defense Security Service before she admitted to minimizing her illegal drug use. She first deliberately provided false information in June 1999. She subsequently provided false information about her illegal drug use in arch 2002 and April 2002. Applicant did not provide an accurate assessment of her illegal drug use until February 5, 2005. I cannot conclude her final disclosures were prompt. As such PC MC E2.A5.1.3.3 does not apply. I conclude the personal conduct security concern is not mitigated.

## **Guideline J - Criminal Conduct**

Applicant's deliberate falsifications on two different security clearance applications and in a signed, sworn statement provided to the Defense Security Service during her background investigation, violates Title 18, United States Code Section 1001, a felony. A such, Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1: (*Allegations or admission of criminal conduct, regardless of whether the person was formally charged*) and CC DC E2.A10.1.2.2 (*A single serious crime or multiple lesser offenses*) apply.

None of the mitigating conditions apply. Applicant's deliberate falsifications occurred during a current background investigation, as such her criminal conduct is recent. Since she falsified two different security clearance applications and one signed, sworn statement, her criminal conduct cannot be described as an isolated incident. Applicant maintained her deliberate deceptions pertaining to her drug use over a five-year period. Considering she did not fully disclose the extent of her drug use until February 2005, I find that not enough time has passed to establish clear evidence of successful rehabilitation. The security concern raised by Applicant's criminal conduct is not mitigated.

## **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. Guideline H: AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant



Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For 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

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph 3.a Against Applicant

### **DECISION**

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

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.
2. Tr. at 67.
3. Gov Ex 2, question 31.
4. Tr. at 27-29.
5. Gov Ex 1.
6. Gov Ex 2.
7. (Question 27 reads the same as the June 28, 1999 security clearance application.)
8. Gov Ex. 3.
9. Gov Ex 3, p.2.
10. Gov Ex 4.
11. Gov Ex 4, p.2.
12. Gov Ex 4, p.3.
13. *Id.*
14. Gov Ex 4, p.4.
15. *Id.*
16. *Id.*
17. Gov Ex 2.
18. *Id.*
19. Gov Ex 4, p. 3.
20. Tr. at 19-20.
21. Tr. at 58.
22. Tr. at 51-54.
23. Tr. at 58.
24. Tr. at 65.
25. Tr. at 62.
26. Tr. at 68.