

KEYWORD: Personal Conduct

DIGEST: Applicant is a 26-year-old systems analyst engineer who has been employed by government contractors since August 2001. She used marijuana on numerous occasions in 1996, and on a single occasion in 2000 while on active duty in the U.S. Army, after being granted a top-secret security clearance with access to sensitive compartmented information. She deliberately failed to disclose her use of marijuana as required in a security clearance application she submitted in August 2001, and during an interview by a government investigator in November 2001. Applicant has failed to mitigate the security concern that arises from her personal conduct. Clearance is denied.

CASENO: 03-12212.h1

DATE: 01/05/2005

DATE: January 5, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-12212

**DECISION OF ADMINISTRATIVE JUDGE**

**HENRY LAZZARO**

**APPEARANCES**

## **FOR GOVERNMENT**

Kathryn D. MacKinnon, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

## **SYNOPSIS**

Applicant is a 26-year-old systems analyst engineer who has been employed by government contractors since August 2001. She used marijuana on numerous occasions in 1996, and on a single occasion in 2000 while on active duty in the U.S. Army, after being granted a top-secret security clearance with access to sensitive compartmented information. She deliberately failed to disclose her use of marijuana as required in a security clearance application she submitted in August 2001, and during an interview by a government investigator in November 2001. Applicant has failed to mitigate the security concern that arises from her personal conduct. Clearance is denied.

## **STATEMENT OF THE CASE**

On April 30, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. <sup>(1)</sup> The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline E, involving personal conduct. Applicant submitted an answer to the SOR that was received by DOHA on ay 27, 2004, requested a hearing, and admitted all SOR allegations.

The case was assigned to me on September 10, 2004. A notice of hearing was issued on October 18, 2004, scheduling the hearing for November 8, 2004. The hearing was conducted as scheduled. The government submitted three documentary exhibits that were marked as Government Exhibits (GE) 1-3, and admitted into the record without objection. Applicant testified, and offered seven documentary exhibits that were marked as Applicant Exhibits (AE) 1-7, and admitted into the record without objection. The record was held open to provide Applicant the opportunity to submit additional documentation in support of her case. Two additional documents were timely received, marked as AE 8 and 9, and admitted into the record without objection. The transcript was received on November 17, 2004.

## FINDINGS OF FACT

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

Applicant is 26 years old, and has been employed by a defense contractor as a systems analyst engineer since March 2002. She was previously employed by a different defense contractor as a network engineer from August 2001 to March 2002. She served on active duty in the U.S. Army from August 1997 to August 2001, attained the rank of Sergeant (E-5), and received an honorable discharge. The letters of recommendation and certificates of commendation attest to her reputation as a valued employee who is considered by her supervisors and co-workers to be reliable, credible, conscientious, and trustworthy.

Applicant was married in January 2004. She met her husband while they were both on active duty in the Army. He is still serving on active duty. She has a six-year-old son from a prior relationship.

Applicant used marijuana on a number of occasions in 1996. She provided a statement to a Special Agent from the Defense Security Service (DSS) on October 23, 2002 in which she estimated her marijuana use in 1996 occurred on 10-20 occasions. (GE 3) However, in a security clearance application (SF 86) she submitted in November 2003, she estimated she used the substance on 50 occasions in 1996. (AE 9) She also used marijuana once in 2000 while she was on active duty in the Army, and after she had been granted a top-secret security clearance and access to sensitive compartmented information (SCI).

Applicant testified she used marijuana in 1996 because she felt pressured to use the drug by her then boyfriend, the father of her son, who she felt was emotionally abusive toward her. She testified the 2000 use occurred because she was offered the marijuana by a male Soldier who she wanted to become romantically involved with and who is now her husband. After smoking a small amount of the marijuana in 2000, she informed the man she did not want to use the drug, and claims they immediately quit and that she has not used marijuana since then.

Applicant submitted an SF 86 in August 2001, and failed to disclose she had used marijuana in 1996 and 2000 as required by question 27. She also failed to disclose she used marijuana while possessing a security clearance as required by question 28. Applicant previously submitted an SF 86 in April 1998, in which she also failed to disclose her 1996 drug use as required by question 27. In her SOR answer, the statement to the DSS agent, and in her testimony she acknowledged she deliberately provided false answers to those questions. She explains she falsified the answers because she was afraid of losing her job and felt uncomfortable about revealing the information.

Applicant's use of marijuana first came to light in November 2001 when she was questioned by a polygrapher from a government intelligence agency as part of the agency's routine employment process. Although she initially denied using marijuana, after she was told she had failed the

polygraph examination, Applicant for the first time admitted using the drug. That agency denied her SCI access, which was a requirement for employment.

## **POLICIES**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. 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. Considering the evidence as a whole, Guideline E, pertaining to personal conduct, with its DC and MC, is most relevant in this case.

## **BURDEN OF PROOF**

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(2)</sup> The government has the burden of proving controverted facts.<sup>(3)</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence<sup>(4)</sup>, although the government is required to present substantial evidence to meet its burden of proof.<sup>(5)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>(6)</sup> 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.<sup>(7)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(8)</sup>

No one has a right to a security clearance<sup>(9)</sup> and "the clearly consistent standard indicates that

security clearance determinations should err, if they must, on the side of denials."<sup>(10)</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>(11)</sup>

## **CONCLUSIONS**

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information.

As alleged in the SOR, Applicant deliberately provided false answers in the SF 86 she submitted, and in an interview with an investigator from another government agency. Although not alleged in the SOR, the false answer she provided in the 1998 SF 86, and the minimization of her 1996 use of marijuana during the DSS interview, as disclosed by the information she supplied in the 2003 SF 86, demonstrate the alleged falsifications were not isolated incidents. Further, Applicant's use of marijuana in 2000 while on active duty in the Army and in possession of a top-secret security clearance with SCI access speaks volumes about her trustworthiness. Applicant's conduct severely undermines the ability to place trust and confidence in her, and raises significant security concerns. Disqualifying Conditions (DC) 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*; and DC 3: *Deliberately providing false or misleading information concerning relevant and material matters to an investigator, or other official representative in connection with a personnel security or trustworthiness determination* apply in this case.

I have considered all Mitigating Conditions (MC) under Guideline E and none apply. I have specifically considered MC 2: *The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*; and MC 3: *The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts* and conclude that neither applies. Applicant on multiple occasions denied using controlled substances and did not disclose her use of marijuana until confronted with a polygraph examination. Even then she minimized the extent of her use of the drug. Further, her falsifications were recent, considering they continued from at least 1998, when she submitted the first falsified SF 86 in evidence, until 2003, when she submitted the last SF 86 in evidence wherein she disclosed a greater use of marijuana in 1996 than she had previously revealed. Guideline E is decided against Applicant.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has failed to overcome the case against her and satisfy her ultimate burden of persuasion. It is not clearly consistent with the national interest to grant Applicant a security clearance.

### **FORMAL FINDINGS**

SOR ¶ 1-Guideline E: Against the Applicant

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: 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.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id* at 531.
11. *Egan*, Executive Order 10865, and the Directive.