

KEYWORD: Drugs; Personal Conduct

DIGEST: Applicant mitigated concerns over his dated past drug use which ended in 1999 and over his personal conduct as his earlier falsification was isolated; he subsequently voluntarily provided correct information about his past drug use on his security form submitted in 2001. Applicant has a excellent employment record and favorable references. Clearance is granted.

CASENO: 03-14581.h1

DATE: 03/08/2005

DATE: March 8, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-14581

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated concerns over his dated past drug use which ended in 1999 and over his personal conduct as his earlier falsification was isolated; he subsequently voluntarily provided correct information about his past drug use on his security form submitted in 2001. Applicant has an excellent employment record and favorable references. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on April 26, 2004. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. ⁽¹⁾ The SOR alleges specific concerns over drug use (Guideline H) and personal conduct (Guideline E). Applicant responded to these SOR allegations in an Answer notarized on May 11, 2004, where he admitted all of the allegations in paragraphs 1 and 2 and requested a hearing. (Answer)

The case was assigned to Department Counsel who on June 25, 2004, attested it was ready to proceed. On July 7, 2004, the case was assigned to me. Subsequently, a mutually convenient date for hearing was agreed to; and a Notice of Hearing was issued on July 20, 2004, which set the matter for August 10, 2004, at a location near where Applicant works and lives. At the hearing the Government offered two exhibits (Exhibits 1-2) which were admitted into evidence. The Applicant represented himself; he testified, offered three exhibits (Exhibit A-C), and called one additional witness.

The transcript (TR) was received on August 20, 2004. Department Counsel referenced an Appeal Board Decision and Reversal Order which he provided for Official Notice on September 1, 2004. (ON I)

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, 29 years old, has worked for Defense Contractor #1 in State #1 since August 1997. In July 2001 Applicant completed a Security Clearance Application (SF 86) as he needs a security clearance to perform his job. His SF 86 documents he was initially granted a Secret security clearance in November 1997. (Exhibit 1; TR 22-24)

Applicant attended a state university in State #2 from 1993 to 1997 and received a degree in May 1997. He married in 2001. (Exhibit 1)

Drug Use and Personal Conduct

Applicant initially completed a security form (SF 86) in 1997⁽²⁾ and failed to disclose his past drug use. (Exhibit 2; TR 24-25) However, in July 2001 when he updated his SF 86, he voluntarily disclosed this past drug use in response to Questions 27 and 28: Applicant disclosed that he had used marijuana while in college and also used marijuana a few times after college from May 1998 to June 1999 after he had been granted a security clearance. In his 2001 SF 86 he also disclosed that in his earlier security clearance paperwork, he had answer no to questions 28 and 29 because he was "scared of possible repercussions" on his job. He also disclosed that he had purchased marijuana for his own use while in college and had on three or four occasions sold a joint to a friend but did not make a profit. After college, marijuana was given to him. (Exhibit 1; TR 25-27) When he initially completed his SF 86, Applicant was not sure who would see the paperwork. He later disclosed his drug use as he knew he was wrong not to disclose it on the earlier government forms. His later disclosures where of his own volition. (TR 27-29, 30-31)

Similarly when he was interviewed by a Defense Security Service (DSS) agent in March and April 2003, he again revealed voluntarily additional details about his past drug use which began in November 1993 and extended to 1996; from May 1998 to June 1999 he used marijuana three times with a friend. He also used magic mushrooms once in 1993 in college. He has not been involved with drugs since June 1999 and will do use any drugs in the future. (Exhibit 2; TR

Applicant voluntarily took a drug test in August 2004 which was negative. (Exhibit B)

Applicant provided favorable performance reviews for the years July 2000 to June 2003. (Exhibit C)

Reference

Applicant's supervisor testified that he is a program manager who has known Applicant for three years. He testified that Applicant has a very good work ethic. He admitted that the company does not do a very thorough job of briefing employees on the importance of completing the clearance paperwork thoroughly. (TR 17-19, 20)

Applicant's direct supervisor has known him five years and supervised him for 16 months; he performs exceptionally well in his job and was recently promoted to a senior engineer because of his exemplary performance and qualifications. His reliability and integrity are above reproach. The supervisor strongly recommends Applicant for a security clearance. (Exhibit A)

The government property administrator recommended him as a "high-energy self-starter who quickly assumes responsibility and is not afraid to face new challenges and situations." She concluded he is a conscientious worker with an excellent work ethic who has proven to be trustworthy. (Exhibit A)

A co-worker who has known Applicant for seven years attested that Applicant is very reliable and trustworthy. (Exhibit A)

A friend who used to work with Applicant and has known him six years attested that Applicant is trustworthy. (Exhibit A)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole, I weighed relevant Adjudication Guidelines as set forth below:

Guideline H - Drug Involvement

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:

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.

Guideline E - Personal Conduct

E2.A5.1.1. 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.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. The Applicant

presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance.

Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Drug Use

Applicant's intermittent marijuana use and psilocybin use from 1993 to 1996 and marijuana use again from April 1999 to June 1999 after he had been granted a security clearance in November 1997 raised security concerns.⁽³⁾ For Applicant to use drugs knowing that it was against his company's and the government's policies, raises questions about his judgment.

Since Applicant has not been involved with drugs since June 1999 and will not use any drugs in the future, he has mitigated⁽⁴⁾ these concerns. Applicant made a commitment to avoid all future drug use and has not used any marijuana since 1999, a period of five years. Given his record of excellence at work, he has mitigated his past drug use as his drug involvement was not recent and he has demonstrated his intent not to abuse any drugs in the future by his long abstinence. Thus, after considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraphs 1.a. through 1.c of SOR Paragraph 1.

Personal Conduct

The Government raised security concerns over Applicant's personal conduct as Applicant failed to disclose his past drug use on the security form he submitted in 1997. His earlier omission reflects behavior⁽⁵⁾ of questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations and could indicate that he may not properly safeguard classified information. While this document was not submitted in evidence, Applicant conceded

this omission when he submitted an updated security form in 2001 and voluntarily disclosed his past drug use.

However, in closing argument the Government conceded that Applicant had rebutted and overcome the Government's case and mitigated⁽⁶⁾ this personal conduct concern (TR 34-36). While his initial reason for the 1997 omission is not persuasive, it is significant that Applicant voluntarily disclosed his earlier drug use in his 2001 SF-86 and in his DSS interview. Thus, his conduct falls within E2.A5.1.3.2. The falsification was an isolated incident. It was not recent and Applicant has subsequently provided correct information voluntarily. See, Appeal Board Decision and Reversal Order, ISCR Case No. 99-0557, issued July 10, 2000. (ON I)

Consequently, after a review of him as a whole person, I conclude that Applicant corrected his earlier misconduct when he chose to make amends by giving truthful answers to the drug questions on the 2001 security form. Applicant's favorable work record and supportive character references are impressive and demonstrate that he has reformed and is trustworthy. Hence, after considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 2..a. under SOR Paragraph 2

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline H: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Paragraph 3. Guideline E: FOR APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. This SF-86 was not offered in evidence so the date 1997 is an estimate based on the fact his security clearance was granted in November 1997.
3. **Conditions that could raise a security concern and may be disqualifying include:** E2.A8.1.2.1. Any drug abuse.; E2.A8.1.2.1.2. Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.
4. **Conditions that could mitigate security concerns include:** E2.A8.1.3.1. The drug involvement was not recent; E2.A8.1.3.3. A demonstrated intent not to abuse any drugs in the future.
5. **Conditions that could raise a security concern and may be disqualifying also 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, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; 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 trust-worthiness determination.
6. **Conditions that could mitigate security concerns include:** E2.A5.1.3.1. The information was unsubstantiated or not

pertinent to a determination of judgment, trustworthiness, or reliability; E2.A5.1.3.2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily; E2.A5.1.3.3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts; E2.A5.1.3.4. Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided; E2.A5.1.3.5. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress; E2.A5.1.3.6. A refusal to cooperate was based on advice from legal counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information; E2.A5.1.3.7. Association with persons involved in criminal activities has ceased.