

KEYWORD: Personal Conduct; Drugs; Criminal Conduct

DIGEST: Applicant used methamphetamine while working for an employer who maintained a drug free workplace. His drug use was detected in 1997 in a random drug test, and he was forced to attend a treatment program or face dismissal. Applicant continued to use methamphetamine during his treatment and thereafter. On 30 March 2002, Applicant resigned because he had been chosen for another drug test and he feared the test would reveal his continued use of methamphetamine. Applicant deliberately failed to list his drug use on his security clearance application. Clearance is denied.

CASENO: 03-15810.h1

DATE: 02/22/2005

DATE: February 22, 2005

---

In re:

-----  
SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 03-15810

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant used methamphetamine while working for an employer who maintained a drug free workplace. His drug use was detected in 1997 in a random drug test, and he was forced to attend a treatment program or face dismissal. Applicant continued to use methamphetamine during his treatment and thereafter. On 30 March 2002, Applicant resigned because he had been chosen for another drug test and he feared the test would reveal his continued use of methamphetamine. Applicant deliberately failed to list his drug use on his security clearance application. Clearance is denied.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 27 August 2004, DOHA issued a Statement of Reasons <sup>(1)</sup> (SOR) detailing the basis for its decision-security concerns raised under Guideline E (Personal Conduct), Guideline H (Drug Involvement), and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on 9 September 2004 and elected to have a hearing before an administrative judge. On 23 November 2004, he requested his case be decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on 22 November 2004. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on 14 December 2004 and responded on 29 December 2004. The case was assigned to me on 11 February 2005.

**FINDINGS OF FACT**

Applicant is a 40-year-old electronics technician for a defense contractor. Ex.4 at 1, 2. He is well thought of by his coworkers as a reliable and hardworking employee.

Applicant used marijuana about three times in 1977 or 1978. His parents discovered his drug use and forced him to stop. Ex. 5 at 1. In the Spring of 1997, he used crystal methamphetamine twice with coworkers at a telephone company. Shortly thereafter, Applicant was required to give a urine specimen as part of the company's random drug testing program. The test revealed Applicant's use of methamphetamine. As the company was a drug-free workplace, Applicant was required to agree to undergo treatment or be fired. He received six weeks of outpatient treatment, that he successfully completed in the Fall of 1997, and aftercare treatment, that he successfully completed in 1999. *Id.*

Nevertheless, Applicant continued to use methamphetamine between 1997 and 2002 every three weeks. On 30 March 2002, Applicant was again selected for random drug testing. Applicant feared that his continued use of methamphetamine would be detected and he would be fired, so he resigned from the company. *Id.* at 2.

On 21 March 2003, Applicant signed his security clearance application certifying his statements on the form were "true, complete, and correct" to the best of his knowledge and belief and acknowledged that any "knowing and willful false statement" on the form was subject to the criminal sanctions of 18 U.S.C. § 1001. Ex. 4 at 7-8. Question 27 asked if, in the previous seven years, Applicant had illegally used any controlled substance. Applicant answered "no." *Id.* at 6. Applicant did not report his drug use because he thought that if he did, he would not have been hired by the defense contractor. Ex. 5 at 2; Response to Form at 2.

## **POLICIES**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, 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." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

## CONCLUSIONS

### **Guideline E-Personal Conduct**

In the SOR, DOHA alleged Applicant falsified material facts on his SCA by denying he had illegally used a controlled substance in the previous seven years (¶ 1.a). Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government established by Applicant's admissions that he deliberately falsified his security clearance application concerning his drug use because he was afraid if his employer knew of it, he would not have been hired. Deliberately omitting relevant and material facts from a security clearance application may disqualify an applicant from being granted a security clearance. DC E2.A5.1.2.2. An applicant's history of drug abuse is relevant and material to a determination of an applicant's security worthiness. Although Applicant admitted his use to the DSS agent, it was too little, too late. None of the mitigating conditions apply. I find against Applicant on ¶ 1.

### **Guideline H-Drug Involvement**

The Government alleged Applicant used methamphetamine from February 1997 to 30 March 2002 (¶ 2.a), received treatment from a mental health and substance abuse center (¶ 2.b), resigned from employment after being selected for a random drug test to avoid being terminated for illegal drug use (¶ 2.c), and used marijuana three times in 1977 or 1978 (¶ 2.d). The improper or illegal involvement with drugs raises questions regarding an applicant'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.

The Government established that Applicant abused drugs (DC E2.A8.1.2.1) by using marijuana in 1977-78 and using methamphetamine from 1997-2002. His use of marijuana was not recent (MC E2.A8.1.3.1) being some 20 years before his use of any other illegal substance. Therefore, I find for Applicant on ¶ 2.d. I also find for Applicant on ¶¶ 2.b and 2.c. Although the information assists in showing the depth of his drug problem and his amenability to treatment and rehabilitation, neither the fact that Applicant received treatment for his drug abuse nor that he resigned from employment to avoid another drug test is a disqualifying condition. I find against Applicant on ¶ 2.a.

## **Guideline J-Criminal Conduct**

In the SOR, DOHA alleged Applicant violated 18 U.S.C. § 1001 by deliberately falsifying his SCA concerning his illegal use of drugs in the previous seven years (¶ 3.a). A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1.

It is a criminal offense to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the jurisdiction of the executive branch of the Government of the United States. 18 U.S.C. § 1001. Security clearances are within the jurisdiction of the executive branch of the Government of the United States. *See Egan*, 484 U.S. at 527. Applicant deliberately lied in the SCA he completed for the purpose of obtaining a security clearance. An applicant may be disqualified from being granted a clearance if he admits criminal conduct. DC E2.A10.1.2.1. None of the listed mitigating conditions apply. As Applicant's use of methamphetamine was also criminal conduct, he is not entitled to the benefit of MC E2.A10.1.3.2 (the crime was an isolated incident). After weighing all of the evidence in this case, I find against Applicant on ¶ 3.a.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline E: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Paragraph 2. Guideline H: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: For 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.

James A. Young

Administrative Judge

1. Required by Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).