

KEYWORD: Drugs; Criminal Conduct

DIGEST: This 53-year-old male has a history of drug abuse beginning in the early 1970s and continuing until at least January 2001. He used illegal drugs (1) more than two decades after telling the Defense Security Service that he would not do so, and (2) for several years after receiving a security clearance in 1997. He was involved in non alcohol-related criminal activity in 1973, 1999, and 2002. His probation in the last matter lasted into 2003. A pattern of questionable conduct, occurring over most of his adult life, has been established. Mitigation and extenuation have not been shown. Clearance is denied.

CASENO: 03-16221.h1

DATE: 12/07/2005

DATE: December 7, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-16221

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 53-year-old male has a history of drug abuse beginning in the early 1970s and continuing until at least January 2001. He used illegal drugs (1) more than two decades after telling the Defense Security Service that he would not do so, and (2) for several years after receiving a security clearance in 1997. He was involved in non alcohol-related criminal activity in 1973, 1999, and 2002. His probation in the last matter lasted into 2003. A pattern of questionable conduct, occurring over most of his adult life, has been established. Mitigation and extenuation have not been shown. Clearance is denied.

STATEMENT OF THE CASE

On September 8, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons

why DOHA could not make the preliminary affirmative finding required under the Directive that it

is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and

determine whether a clearance should be granted, denied or revoked.

On September 24, 2004, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge on the basis of the written record. A File of Relevant Material (FORM) was issued on April 15, 2005. The FORM advised Applicant that any response had to be submitted within 30 days of receipt of the FORM by Applicant. A response was due by June 15, 2005. Applicant submitted a timely response. The case was assigned to me for decision on June 23, 2005.

FINDINGS OF FACT

Applicant is a 53-year-old employee of a defense contractor. The SOR contains 15 allegations, 1.a. - 1.o., under Guideline H (Drugs) and five, 2.a - 2.e., under Guideline J (Criminal Conduct). Applicant admitted Guideline H allegations 1.a. - 1.g., and 1.o. He denies allegation 1.h. He also admits allegations 2.b., 2.c., 2.d., and 2.e., and denies 2.a. All admitted allegations are accepted and made Findings of Fact.

After considering the totality of the evidence of record, ending with the response to the FORM, I make the following FINDINGS OF FACT as to each SOR allegation:

As alleged in the SOR, under:

Guideline H (Drugs)

Applicant:

1.a. - used cocaine, to include crack cocaine, with varying frequency, from August 1997 to at least January 2001. During the three years prior to January 2001, he had used cocaine "approximately 20-25 times" (Item 4)

1.b. - has purchased cocaine.

1.c. - received treatment, from January 22, 2001 to March 21, 2001, at a health care facility in State A. His condition was diagnosed in part, as Cocaine Abuse. The results of his drug screening indicated a high probability of substance dependence. After the treatment program was completed Applicant continued in Cocaine Anonymous" for an additional period.

1.d. - used cocaine, as set forth in 1.a., above, after he was granted a Department of Defense security clearance on June 7, 1997.

1.e. - continued to use cocaine until at least January 2001, even though he had stated, in a sworn statement to an agent of

the Defense Security Service (DSS), executed by Applicant on December 23, 1982, that he did not intend to use drugs in the future.

1.f. - used marijuana, with varying frequency, from 1970 to at least August 1982.

1.g. - has purchased marijuana.

1.h. - was arrested on October 13, 1971 in State B and charged with Possession and Sale of Dangerous Drugs. The charge was dismissed.

1.i. - had non-judicial punishment (NJP) imposed on him on June 28, 1971, under Article 15 of the Uniform Code of Military Justice (UCMJ). The offense was his Possession of Six Grams, More or Less, of Marijuana. He was fined approximately \$73.00 per month for one month, reduced in grade from PV2 to PV1, restricted for seven days, required to perform extra duty for seven days, and ordered to attend three months of drug counseling.

1.j. - used hashish, with varying frequency, from March 1973 to at least August 1974.

1.k - has purchased hashish.

1.l. - used peyote once, in 1972.

1.m. - used LSD once, in 1972.

1.n. - used amphetamines once, in 1972.

1.o. - used mescaline once or twice, in 1970.

Guideline J (Criminal Conduct)

2.a. - the 1971 arrest alleged in SOR 1.h., above.

2.b. - the 1973 NJP alleged in SOR 1.i., above.

2.c. - Applicant was arrested in January 1975 in State C, and charged with Rape. The charge was dismissed.

2.d. - Applicant was arrested on February 20, 1999 in State A. He was charged with (1) Assault and (2) Disorderly Conduct. He was placed on 12 months probation and ordered to attend a Domestic Violence Diversion Program. Both counts were dismissed after he successfully completed all conditions.

2.e. - Applicant was arrested on March 6, 2002 in State A and charged with (1) Prostitution and (2) Loitering for the Purpose of Prostitution. He was found guilty of Count 2 and was sentenced to 12 months probation. Count (1) was dismissed.

Applicant has received highly positive letters of support from his work supervisors (AX D).

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

CONCLUSIONS

The record in this matter closed on June 11, 2005, when Applicant submitted his response to the FORM. Applicant is 53 years old, born in 1952.

Guideline H (Drugs) - Applicant's conduct, as cited in the SOR, and supported by the Items attached to the FORM, reveals a history of drug use, varying by type and extent of use, over most of his adult life. He began with what might be described as the experimental use of peyote, LSD, amphetamines, LSD, and escaline in the early 1970s. He changed to marijuana from 1970 to 1982, stopped his drug use for some years, and then used cocaine from August 1997 to January 2001. Applicant stresses the periods, sometimes years, without drug abuse and his efforts to get professional help (Item 3 and Response to FORM). On balance, the records suggest that Applicant has been an on again, off again, drug abuser, up to the recent past. Many of the cited drugs were used many years ago and, in the absence of more recent use, would likely not be relevant to more recent use. However, the earlier use is relevant since it shows a long history that ended only recently. I have carefully considered Applicant's completion of treatment in 2001, his involvement with Cocaine Anonymous for some period. I note the Applicant's Intake report (Item 9), which contains the following language: "The SASSI [test] measures alcohol and drug use, along with defensiveness, attitudes, and symptoms. Results indicate high probability of substance dependence." Further on in these records is the "Provisional Diagnosis" of "Cocaine Abuse."

The words of praise from his friends and colleagues are all positive factors and have given these factors given considerable weight. However, Applicant's history shows that (1) he used illegal drugs close to two decades after he told a DSS agent in 1982 that he intended no further drug use; and (2) he continued to use illegal drugs for at least three to four years after he received a DoD security clearance in June 1997. This record makes it impossible to have any level of confidence that Applicant can be relied upon not to fall back into old habits, particularly if stress in his life recurs.

Disqualifying Conditions (1) any drug abuse and (2) illegal drug possession, including cultivation, processing, manufacture, purchase, or distribution are applicable. Mitigating Conditions (1) drug involvement was not recent is applicable but, when viewed in an overall context is not yet persuasive; (4) is also applicable in that Applicant did complete a drug treatment program in 2001, but whether he "successfully" completed it has still not been clearly established.

Guideline J (Criminal Conduct) -Applicant's drug use led to violations of the law in 1971 (SOR 2.a.), and 1973 (SOR 2.b.). Other criminal incidents, apparently not drug-related) occurred in 1975 (SOR 2.c.) (Rape); 1999 (SOR 1.d.) (Assault and Disorderly Conduct); and 2002 (SOR 2.e.) (Prostitution and Loitering for the Purpose of Prostitution).

As to the 1971 arrest, Applicant say that the marijuana was in the trunk of a car driven by a friend and that the case was dismissed because of "insufficient evidence" (Item 4). The court record states that the dismissal resulted from a finding that the search of the trunk was illegal (Item 7). In any case, there is no evidence suggesting that the marijuana in the trunk was tied to Applicant. The 1973 criminal violation is clearly established by the military records (Item 8).

The rape arrest in 1975 occurred, according to Applicant, after consensual sex with a woman who then reported him for raping her. She subsequently withdrew the charge and the case was dismissed. The only details about this matter are found in Applicant's sworn statement (Item 8). From the totality of the evidence, I conclude it was more or less consensual sex between two inebriated and adult individuals. The record does not suggest any criminal conduct by Applicant.

The last two criminal incidents are most troubling, because of their recency, variety, and seriousness as to Applicant's judgment and reliability. The Assault and Disorderly matter in 1999 was viewed seriously enough by the court to require Applicant to serve 12 months probation and complete a Domestic Violence Diversion program before the charges were dismissed. The March 2002 arrest for Prostitution and Loitering in March 2002 is only the most recent example of the exercise of extremely poor judgment by Applicant, and it led to his being again placed on 12 months probation, ending in 2003. I have carefully considered Applicant's varied explanations for his conduct and how each incident occurred. In most cases, as described above, whether drug-related or not, Applicant allowed himself to become involved in questionable, and too often criminal, behavior.

Disqualifying Conditions (1) any criminals conduct, regardless of whether the person was formally charged; and (2) a single serious crime or multiple lesser offenses are applicable, but none of the parallel mitigating conditions have been established by the record; e.g., (1) the conduct is still recent, (2) was not an isolated incident, and (5) there is as yet no clear evidence of successful rehabilitation.

In summary, I conclude that most of the Government's concerns remain valid and not mitigated. Consequently, the record does not permit a finding that Applicant has demonstrated he presently possesses the good judgment reliability, and trustworthiness required of anyone seeking access to the nation's secrets.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline H (Drugs) Against the Applicant

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. Against the Applicant

Subparagraph 1.h. For the Applicant

Subparagraph 1.i. Against the Applicant

Subparagraph 1.j. Against the Applicant

Subparagraph 1.k. Against the Applicant

Subparagraph 1.l. Against the Applicant

Subparagraph 1.m. Against the Applicant

Subparagraph 1.n. Against the Applicant

Subparagraph 1.o. Against the Applicant

Guideline J (Criminal Conduct) Against the Applicant

Subparagraph 2.a. For the Applicant

Subparagraph 2.b. Against the Applicant

Subparagraph 2.c. For the Applicant

Subparagraph 2.d. Against the Applicant

Subparagraph 2.e. 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.

BARRY M. SAX

ADMINISTRATIVE JUDGE