

KEYWORD: Drugs

DIGEST: Applicant used several illegal drugs from his freshman year in high school in 1990 until October 2001. Applicant mitigated security concerns raised by his drug involvement by changing his lifestyle, quitting drug use, and his demonstrated intent not to use drugs in the future. Clearance is granted.

CASENO: 03-16259.h1

DATE: 07/20/2004

DATE: July 20, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-16259

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant used several illegal drugs from his freshman year in high school in 1990 until October 2001. Applicant mitigated security concerns raised by his drug involvement by changing his lifestyle, quitting drug use, and his demonstrated intent not to use drugs in the future. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 8 December 2003, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline H (Drug Involvement) of the Directive. Applicant answered the SOR in writing on 5 January 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 21 April 2004. On 12 May 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 21 May 2004.

FINDINGS OF FACT

Applicant is a 28-year-old software engineer for a defense contractor. He married in April 2002. He is a certified emergency medical technician and will begin training as a volunteer fireman in the near future.

Applicant began using drugs in about 1990, when he was enrolled in high school. He used marijuana occasionally between 1990 and 31 October 2001. Between 1992 and 1994, he used LSD (lysergic acid diethylamide) approximately 10 times and psilocybin three to four times. Between June 1992 and January 1997, Applicant used crystal methamphetamine between 15 and 20 times. Between January 1996 and 31 October 2001, Applicant used cocaine about 15 times. He used ecstasy six to ten times between September 2000 and May 2001. In May 1994, Applicant was cited for possession of marijuana and drug paraphernalia. The charges were reduced to possession of drug paraphernalia and Applicant paid a \$60 fine. Applicant has not experienced any flashbacks as a result of his use of illegal substances.

After graduating from college in June 2001, Applicant was unable to find work in his career field. He realized he had to change his ways and grow up. He last used illegal drugs on 31 October 2001. Shortly thereafter, a friend advised him of a job opening that he knew required drug testing. He applied for the job and completed the security clearance application (SCA). He freely admitted the nature and extent of his drug use on his SCA and to the Defense Security Service Agent who interviewed him. He no longer associates with those with whom he used illegal drugs.

Shortly before the hearing, Applicant was evaluated by a clinical psychologist. After interviews and three clinically based tests, the psychologist concluded there was no evidence Applicant had alcohol or drug dependence.

Applicant has no intention of using drugs in the future. He understands using drugs will cost him his clearance and possibly his job. While he is not proud of his drug use, his friends, family, and supervisors are aware of the nature and extent of his drug use. *Id.* at 2. Applicant's supervisors find him to be reliable, conscientious, trustworthy, hardworking, and a team player. They have seen no evidence that would cause them to suspect he is currently using drugs.

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 restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of

the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* 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.

CONCLUSIONS

In the SOR, DOHA alleged Applicant used ecstasy between September 2000 and May 2001 (¶ 1.a.), used cocaine between June 1996 and October 2001 (¶ 1.b.), used crystal methamphetamine between June 1992 and January 1997 (¶ 1.c.), used and purchased marijuana between June 1990 and October 2001 (¶ 1.d.), used LSD between 1992 and 1994 (¶ 1.e.), used psilocybin between 1992 and 1994 (¶ 1.f.), and was cited for possession of marijuana and drug paraphernalia in 1994 (¶ 1.g.). 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 by substantial evidence and Applicant's admissions each of the allegations in the SOR. Applicant abused (DC E2.A8.1.2.1.) and purchased (DC E2.A8.1.2.2.) illegal drugs. Applicant has not used drugs in over two and one-half years during which time he has been subject to drug testing. It is clear that Applicant has changed his life. He is employed, married, and has much to lose, including his job, if he were to resume using drugs. Although he quit using drugs shortly before being hired and only four months before completing his SCA, under the all the circumstances of this case, I conclude his use was not recent. MC E2.A8.1.3.1. Applicant is not dependent on illegal substances and has a demonstrated intent not to abuse any drugs in the future. MC E2.A8.1.3.3. As Applicant explained his drug use to his family, friends, and supervisors, he is not in a position to be blackmailed or otherwise exploited. After carefully considering all of the evidence of record, including his age at the time he used drugs, the presence of rehabilitation, and the unlikelihood of this conduct to recur, I find for Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline H: FOR 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

Subparagraph 1.g.: For Applicant

DECISION

In light of all of 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 Applicant. Clearance is granted.

James A. Young

Administrative Judge

1. Pursuant to 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).