

KEYWORD: Drugs

DIGEST: Applicant's abuse of marijuana from January 1996 to February 2003 is not mitigated where he used marijuana after applying for a clearance in January 2002 and stated a possible intent to continue to use marijuana during a subject interview in April 2003. Clearance denied.

CASENO: 03-16483.h1

DATE: 05/31/2005

DATE: May 31, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-16483

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR.

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's abuse of marijuana from January 1996 to February 2003 is not mitigated where he used marijuana after applying for a clearance in January 2002 and stated a possible intent to continue to use marijuana during a subject interview in April 2003. Clearance denied.

STATEMENT OF THE CASE

Applicant appeals the 30 December 2003 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) ⁽¹⁾ recommending denial or revocation of Applicant's clearance because of drug abuse. Applicant answered the SOR in January 2004 and requested a hearing. DOHA assigned the case to me 8 November 2004 and I convened a hearing on 8 December 2004. DOHA received the transcript 16 December 2004.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR ⁽²⁾; accordingly, I incorporate the admissions as findings of fact.

Applicant--a 29-year-old test computer programmer for a defense contractor--seeks access to classified information. He has not previously had a clearance.

Applicant has been a recreational marijuana abuser from January 1996, when he was in college, to February 2003, five years after graduating. He estimates he used marijuana 100-200 times during this time, in social settings. (3) On his 17 January 2002 clearance application (G.E. 1), he reported using marijuana 100 times between January 1996 and January 2002, and MDMA(Ecstasy) twice between June 2000 and May 2001. In addition, he used hallucinogenic mushrooms and LSD on one occasion each in December 2002. He usually got his marijuana from friends, but bought it from friends as many as ten times. He also bought the mushrooms, ecstasy, and LSD that he tried.

During his 3 April 2003 subject interview, Applicant state "it is not impossible that I would take marijuana again in a social situation." (G.E. 3) He claims to have been unaware of the government's proscription of illegal drug use until after that interview. He contacted the agent to make a new statement of intent: "I no longer intend to use drugs and I am interested in getting some kind of drug treatment as a way of proving to the government that I am free of drugs. My intentions have changed as a result of reading on a government website about how the security agencies view the use of drugs. I was not aware of the government policy until I read this. I viewed the use of drugs as a crime like speeding which is not serious but now realize that the government considers it a serious security concern". (G.E. 2)

At the hearing, Applicant testified he now recognizes the importance of remaining drug free both from a professional standpoint and the clearance perspective. He noted his current employer has a drug policy with random testing and acknowledged that he assumed that all his previous employers probably had similar drug policies that did not stop him from using drugs in the past.

The record contains no evidence of Applicant's work record or character.

POLICIES

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines is Guideline H (Drug Involvement).

BURDEN OF PROOF

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government. [\(4\)](#)

CONCLUSIONS

The government has established its case under Guideline H and the Applicant has not mitigated the conduct. Applicant was a recreational abuser of marijuana from January 1996 to February 2003, well after his graduation from college. He experimented with drugs other than marijuana after college as well. The illegality of his drug use did not prevent him from using drugs. He continued his drug use after applying for a clearance in January 2002, and went so far as to intimate he would continue to use marijuana until he discovered the likely consequence of his continued drug use on his clearance. Now he forswears future use.

Viewed as a whole, his drug use is recent and not infrequent or isolated. His use continued well past an age where it might be attributed to youthful immaturity and continued notwithstanding its illegality, bespeaking a lack of judgment inconsistent with access to classified information.

Although Applicant now vows to refrain from marijuana abuse because he now realizes how significant the government considers his occasional use, I find that vow neither credible nor sufficient to constitute a demonstrated intent to refrain from drug abuse in the future, particularly given the circumstances of Applicant's past use. Accordingly, I resolve Guideline H against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline H: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph 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.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6, as amended (Directive)
2. Although he correctly pointed out that the drug use alleged in 1.b. and 1.e. is the same drug.
3. Although his estimates have varied. He estimated he used 100 times on his clearance application (G.E. 1) and during his 3 April 2003 subject interview (G.E. 3). His January 2004 answer claimed 100 times was a high estimate, "it may have been less than 50."
4. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).