

KEYWORD: Criminal Conduct; Drugs; Personal Conduct

DIGEST: Security concerns persist over Applicant's criminal conduct, drug abuse, and personal conduct over his 2000 arrest and conviction for attempted preparation of drugs for sale. He misrepresented the length of time he had sold drugs to his probation officer. Further, while he stopped using drugs in 1998, he continued his drug involvement by selling drugs until he was arrested in 2000. Overall, he failed to demonstrate clear evidence of successful rehabilitation. Clearance is denied.

CASENO: 03-18165.h1

DATE: 08/23/2005

DATE: August 23, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-18165

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Security concerns persist over Applicant's criminal conduct, drug abuse, and personal conduct over his 2000 arrest and conviction for attempted preparation of drugs for sale. He misrepresented the length of time he had sold drugs to his probation officer. Further, while he stopped using drugs in 1998, he continued his drug involvement by selling drugs until he was arrested in 2000. Overall, he failed to demonstrate clear evidence of successful rehabilitation. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on December 3, 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 criminal conduct (Guideline J), drug abuse (Guideline H), and personal conduct (Guideline E). Applicant responded to these SOR allegations in an Answer notarized on December 22, 2004, where he requested an administrative determination without a hearing.

Department Counsel on April 20, 2005, prepared a File of Relevant Material (FORM) which was sent to Applicant that day. Applicant received the FORM on April 28, 2005, but did not respond or submit any additional information within 30 days of receipt. Consequently, on June 15, 2005, the case was assigned to me.

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, 26 years old, has worked as an administrative assistant for Employer #1 in State #1 from October 2000 to present. Previously, he worked for Employer #2 in State #2 from August 1999 to October 2000. He completed a SF-86 security clearance application in January 2001. (Exhibit 4)

Applicant graduated from vocational school in State #1 in July 2000 and attended community college in State #2 from 1999 to May 2000. He is single. His father lives in State #1 and his mother in State #2. (Exhibits 4, 8)

Criminal Conduct, Drugs, and Personal Conduct

On his 2001 Security Clearance Application Applicant disclosed only his use of marijuana ten times from 1994 to December 1998. In his Defense Security Service (DSS) interview in July 2001, Applicant clarified that he smoked marijuana two times weekly on "a continuous basis" with friends from 1994 to December 1998. (Exhibits 4, 9) (SOR 2.b.)

Applicant admitted he was arrested in February 2000 in State #2 and charged with (1) Preparation of Dugs for Sale, felony, and (2) Possession of Criminal Tools, felony. He was indicated in July 2000 and plead guilty in August 2000 to an amended Count (1), Attempted Preparation of Drug for Sale. The police department report stated that when questioned by police, Applicant volunteered that he had "a couple bags of pot." A police officer recovered 17 plastic bags containing suspected marijuana from Applicant; each bag was equally measured indicating that they were packaged for sale. He was sentenced to six months in jail (suspended) and place on one year probation, fined \$500. plus court costs and probation fees. Count (2) was Nolle Prosed. The court allowed him to serve probation in State #1 where he had relocated. (Exhibits 1, 3, 5, 6, 7, 8) (SOR 1.a.; 2.a.)

When interviewed by the State #2 probation officer in August 2000, Applicant declared he had "just started selling marijuana that week and was planning to stop that day." (Exhibit 8) In his July 2001 DSS interview he acknowledged that, in fact, he had begun to sell marijuana in the fall of 1999 on a daily basis until April 2000⁽²⁾ when he was arrested. He stated that during his probation he has "stayed out of trouble and. . . had no adverse contact with law enforcement." He no longer participates in the use or selling of marijuana or any other illegal substances. (Exhibit 9) (SOR 2.c. and

3.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 J - Criminal Conduct

E2.A10.1.1. The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Guideline H - Drug Involvement

E.2.A.8.1.1. The Concern: 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.

Guideline E - Personal Conduct

E2.A5.1.1. The Concern: 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

Criminal Conduct

The Government established security concerns⁽³⁾ over Applicant's criminal conduct in August 2000 when police officer recovered 17 plastic bags containing suspected marijuana from Applicant where each bag was equally measured and packaged for sale. He plead guilty in August 2000 to an amended Count (1), Attempted Preparation of Drug for Sale. He was sentenced to six months in jail (suspended) and placed on one year probation, fined \$500 plus court costs and probation fees. The court allowed him to serve probation in State #1 where he had relocated. Applicant provided no evidence that he has completed probation.

While Applicant asserts he was moved away from the adverse peer pressure in State #2 and relocated to a new environment, his assurance that he has matured is insufficient to mitigate this concern. He failed to provide evidence, such as letters of reference, to establish that he meets any of the mitigating conditions. For example, he provided no evidence other than his own statements to establish MC 6 (E2.A10.1.3.6): clear evidence of successful rehabilitation. Applicant provided no evidence of a successful work record or evidence of how he has reformed his conduct at work and at home. Thus, Applicant has failed to mitigate⁽⁴⁾ his criminal conduct.

Consequently, I conclude that the factors leading to the earlier violations may still recur. Hence, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraph 1.a. incorporated under SOR Paragraph 1.

Guideline H - Drug Involvement

Similarly, the Government established security concerns over his drug use and sales as illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. He used marijuana regularly from 1994 to 1998 and sold marijuana from fall 1999 to his arrest in April 2000, discussed above. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information. His actions fall within conditions that could raise a security concern and may be disqualifying including: E2.A8.1.1.2.1. (any drug abuse) and E2.A8.1.1.2.2. (illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution).

Applicant mitigated⁽⁵⁾ security concerns over his dated use of marijuana as there is no evidence that he returned to use drugs subsequently. Thus, E2.A8.1.1.3.1. (The drug involvement was not recent.) applies. However, concerns persist over his regular sales of marijuana and over his arrest and guilty plea as he provided no evidence that he successfully completed probation and is rehabilitated. His defense that he was "coerced by the wrong crowd" is insufficient to mitigate these concerns. Thus, I conclude that the factors leading to the earlier drug involvement raise concerns as he did not provide sufficient evidence in mitigation.

Hence, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant under subparagraph 2.b. and against Applicant on subparagraph 1.a. and 2.c. incorporated under SOR Paragraph 2.

Personal Conduct

The Government established security concerns over Applicant's Personal Conduct over his false statement to his probation officer with respect to the length of time he sold drugs which was alleged and falls within Disqualifying Condition (DC) (5): E2.A5.1.2.5. A pattern of dishonesty or rule violations. None of Applicant's explanations meet the mitigation⁽⁶⁾ guidelines.

His disclosures to the DSS agent with respect to the length of time he sold drugs contradicts what he told his probation officer and his denial in his answer. I consider the DSS sworn statement more reliable as he carefully reviewed the Statement and initialed corrections; consequently I conclude the Statement is more reliable and accurate on the length of time he sold drugs. Though not alleged, I note Applicant also demonstrated poor judgement as he failed to disclose other adverse information on his 2001 security clearance form with respect to his past drugs sales and arrest and guilty plea.

Looking at Applicant as a whole person⁽⁷⁾ and considering the circumstances surrounding his conduct (E2.2.1.2), I conclude Applicant failed to provide sufficient evidence of a current record of rehabilitation and pertinent behavioral changes. Overall, I conclude that he has failed to provide sufficient evidence of reform over these personal conduct

issues. Thus, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant under SOR Paragraph 3 under subparagraph 3.a.

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 J: 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.: Against Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 1.a.: Against 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 the Applicant. Clearance is denied.

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. Applicant's denial of SOR 2.c. and 3.a. is not credible and is contradicted by his admissions to DSS in his Sworn Statement. He carefully reviewed the Statement and initialed corrections; consequently I conclude the Statement is accurate and more reliable. While not alleged, he was also not truthful on his SF 86 as he did not disclose his marijuana sales or arrest on the security clearance application. Similarly, he was not honest with the police when initially questioned as Applicant volunteered that he only had "a couple bags of pot." (Exhibits 3, 4, 7, 9)
3. **E2.A10.1.2. Conditions that could raise a security concern and may be disqualifying include:**
 - E2.A10.1.2.1 Allegations or admissions of criminal conduct, regardless of whether the person was formally charged.;
 - E2.A10.1.2.2. A single serious crime or multiple lesser offenses.
4. **E2.A10.1.3. Conditions that could mitigate security concerns include:** E2.A10.1.3.1. The criminal behavior was not recent; E2.A10.1.3. 2. The crime was an isolated incident; E2.A10.1.3.3. The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life; E2.A10.1.3. 4. The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur; E2.A10.1.3. 5. Acquittal; E2.A10.1.3.6 There is clear evidence of successful rehabilitation.
5. **E2.A8.1.1.3. Conditions that could mitigate security concerns include:** E2.A8.1.1.3.1.The drug involvement was not recent; E2.A8.1.1.3.2. The drug involvement was an isolated or aberrational event; E2.A8.1.1.3.3. A demonstrated intent not to abuse any drugs in the future; E2.A8.1.1.3.4. Satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable diagnosis by a credentialed medical professional.
6. **E2.A5.1.3. 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.

7. In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors: E.2.21.1. The nature, extent, and seriousness of the conduct; E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation; E2.2.1.3. The frequency and recency of the conduct; E2.2.1.4. The individual's age and maturity at the time of the conduct; E2.2.1.5. The voluntariness of the participation; E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes; E.2.2.1.7. The motivation for the conduct; E.2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and E.2.2.1.9. The likelihood of continuation or recurrence.
(E.2.2. Adjudication Process)