

KEYWORD: Drugs; Personal Conduct

DIGEST: Applicant, who is now 46 years old, began using marijuana as an adolescent. Her last use

of marijuana occurred in approximately June 2004, at the age of 44. She falsified her security clearance application by under-reporting her marijuana use and by not listing her most recent use because she did not want this information revealed to her employer. Although Applicant states she will not use marijuana in the future because of its impact on her eligibility for a security clearance, she does not think marijuana is harmful, she speculates that many people who hold security clearances smoke marijuana, and she believes marijuana use should be legalized. Applicant's falsification of her drug use on her security clearance application and her illegal involvement with drugs raise serious security concerns. Clearance is denied.

CASENO: 03-18590.h1

DATE: 10/21/2005

DATE: October 21, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-18590

**DECISION OF ADMINISTRATIVE JUDGE**

**JOAN CATON ANTHONY**

**APPEARANCES**

**FOR GOVERNMENT**

Stephanie C. Hess, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant, who is now 46 years old, began using marijuana as an adolescent. Her last use of marijuana occurred in approximately June 2004, at the age of 44. She falsified her security clearance application by under-reporting her marijuana use and by not listing her most recent use because she did not want this information revealed to her employer. Although Applicant states she will not use marijuana in the future because of its impact on her eligibility for a security clearance, she does not think marijuana is harmful, she speculates that many people who hold security clearances smoke marijuana, and she believes marijuana use should be legalized. Applicant's falsification of her drug use on her security clearance application and her illegal involvement with drugs raise serious security concerns. 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 May 10, 2004, under the applicable Executive Order<sup>(1)</sup> and Department of Defense Directive,<sup>(2)</sup> DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline H (Drug Involvement) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing June 4, 2004, and elected to have a decision without a hearing. On February 11, 2005, Applicant requested a hearing before an administrative judge. The case was assigned to me on June 27, 2005. On September 14, 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The government introduced three exhibits (Ex.) which were marked as government's Ex. 1, 2, and 3, and received into evidence. Applicant introduced one exhibit, which was marked as her Ex. A, and received into evidence. DOHA received the transcript (Tr.) of the proceeding on September 27, 2005.

## **RULINGS ON PROCEDURE**

Applicant was not notified at least 15 days in advance of the time and place of her hearing, as required by ¶ E 3.1.8. of Enclosure 3 of DoD Directive 5220.6. She was offered an opportunity to reschedule her hearing so that she would have a minimum of 15 days to prepare in advance for her hearing. Upon due consideration, Applicant elected to waive the 15 day notice provision of the Directive and to proceed with her hearing. She acknowledged that she understood that if she was not the prevailing party and was not granted a clearance, she would not be able to claim on appeal that she had received insufficient notice of hearing under the Directive.

## **FINDINGS OF FACT**

The SOR contains three allegations of disqualifying conduct. Two allegations relate to conduct under Guideline H, Drug Involvement, and one allegation relates to conduct under Guideline E, Personal Conduct. In her answer to the SOR, Applicant admitted the three allegations, adding explanatory information in two of her admissions. Applicant's admissions are incorporated as findings of fact.

Applicant was born in 1959 and is now 46 years old. She is single and works as a senior systems engineer for a government contractor. She has worked for her present employer for approximately five years, and she supervises two other employees. (Ex. 1; Tr. 35-36.)

During her adolescence, Applicant used hashish two or three times and LSD once. As a young adult she used cocaine once, and experienced no ill effects. (Ex. 3, at 1.)

Applicant has a long history of marijuana use. She began using marijuana in high school, and she used the drug monthly until she graduated from college in 1981. After college, she used marijuana monthly or less until September 1998. (Ex. 3, at 1.) Since 1998, she has used marijuana occasionally. (Ex. 3, at 1; Tr. 40-42.) Her most recent use of marijuana occurred in approximately June 2004. (Tr. 41.)

Applicant's employer asked her to complete a security clearance application (SF-86). Applicant was concerned about her employer learning about her marijuana use and hesitated in completing the SF-86. She was afraid she might lose her job if her employer found out she used marijuana. (Tr. 49-50.) In November 2002, Applicant complied with her employer's request and completed a security clearance application (SF-86). Question 27 on the SF-86 reads:

Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants, (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?

In response to Question 27, Applicant answered "yes" and indicated she had used marijuana five times from November 1995 to September 1998. (Ex. 1.) On December 31, 2002, Applicant used marijuana. In January 2003, Applicant's employer sent her an e-mail asking her to submit a signed copy of her SF-86. Applicant signed and certified her SF-86 on January 14, 2003, but did not report her use of marijuana on December 31, 2002. (Tr. 30; Ex. A.)

Applicant was interviewed by a special agent of the Defense Security Service on May 14, 2003. Applicant admitted she had used marijuana four or five times since 1998 and that her last use of marijuana was December 31, 2002. (Ex. 3, at 1.) She told the special agent she would likely use marijuana in the future. (Ex. 3, at 2.) At her hearing Applicant stated she had under-reported her marijuana use to the special agent and she stated she had in fact used marijuana after December 31, 2002. (Ex. 3, at 1; Tr. 40-41.)

At her hearing, Applicant stated her last use of marijuana occurred in approximately June 2004, after receiving the SOR from DOHA. (Tr. 41.) Applicant was granted an interim security clearance sometime after May 2003. She is unsure whether she used marijuana after being granted the interim security clearance. (Tr. 50-51.)

Applicant stated she intended not to use marijuana in the future. She said she would use marijuana if there were no negative consequences, such as losing her job or a security clearance. (Tr. 50.) Applicant asserted she was hard-working and honorable and trustworthy. (Answer to SOR; Ex. A.)

Applicant is a solitary person and seeks her own counsel. She asserted she used marijuana for spiritual exploration and personal problem-solving. She acknowledged being a social drinker of alcohol but was concerned about losing control when using alcohol. (Tr. 43-44; 46) Applicant believes marijuana is less harmful than alcohol and its use should be legalized. (Tr. 44.) She speculates that many people in high places in government use marijuana and many people who hold security clearances use marijuana. (Tr. 44.) She believes it is a waste of government resources to police the use of marijuana. (Tr. 43-44.)

## **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 personal security guidelines, as well as the disqualifying conditions and mitigating conditions 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

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

In the SOR, DOHA alleged under Guideline H that Applicant used marijuana, with varying frequency, from approximately 1974 or 1975, until at least January 2003. (¶¶ 1.a.); and that she expressed an intention to use marijuana in the future. (¶ 1.b.)

The Government's concern with Guideline H conduct is that it raises questions regarding an individual's willingness to protect classified information. Drug abuse or dependence may impair social or occupational functioning, thereby increasing the risk of an unauthorized disclosure of classified information. ¶ E2.A8.1.1.1.

Drugs are defined under Guideline H as mood and behavior-altering substances, including drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended, and inhalants and other similar substances. ¶¶ E2.A8.1.1.2., E2.A8.1.1.2.1., E2.A8.1.1.2.2. Marijuana or cannabis listed in the Controlled Substances Act of 1970 and identified as a mood and behavior-altering substance under Guideline H. Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction. ¶ E2.A8.1.1.3.

Through Applicant's own admissions, the Government established a *prima facie* case that she used marijuana, an illegal drug. Applicant has admitted Guideline H drug involvement specified in the SOR and identified as disqualifying under ¶¶ E2.A8.1.2.1. of Guideline H.

The record shows that Applicant's most recent drug involvement occurred in 2004. Thus, her drug involvement was recent and mitigating condition E2.A8.1.3.1 does not apply. Applicant's use of marijuana after receiving the SOR raises serious questions under E2.A8.1.1 regarding her willingness or ability to protect classified information.

Applicant's involvement with drugs was neither isolated nor aberrational, for it occurred over a period of almost 30 years, from adolescence to her mid 40s. Thus, mitigating condition E2.A8.1.3.2. does not apply. Applicant's assertions at her hearing that she intends not to use marijuana in the future must be weighed against her statements that she would consider future marijuana use if it would not jeopardize her job or her security clearance. Additionally, Applicant's stated intent not to use marijuana should be evaluated in light of her assertions that she does not think marijuana is harmful, that many people who hold security clearances smoke marijuana, and marijuana use should be legalized. Taken together, Applicant's statements do not demonstrate a credible and reliable intent not to use illegal drugs in the future, and, accordingly, E2.A8.1.3.3. does not apply to Applicant's case. I have evaluated Applicant's drug involvement pursuant to the whole person concept. I conclude the SOR allegations relating to Guideline H against the Applicant.

## **Guideline E - Personal Conduct**

In the SOR, DOHA alleged Applicant raised concerns under Guideline E, Personal Conduct, when she falsified material facts about her last use of marijuana in her answer to Question 27 on her SF-86 (¶ 2.a.) Guideline E conduct, which involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, could indicate an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

With respect to the Guideline E conduct alleged in the SOR, the Government has established its case. The Government established, and Applicant admitted, that she concealed and falsified relevant and material facts in answering Question 27 on her personnel security questionnaire. ¶ E2.A5.1.2.2. Her concealment of information she considered embarrassing or professionally damaging could make her vulnerable to coercion and blackmail. ¶E2.A5.1.2.4. Her conduct raises additional concerns under E2.A5.1.2.5. because it suggests a pattern of dishonesty or rule violation. Applicant's reticence to reveal the truth about her conduct suggests that, under some circumstances, she may put her interests before those of the Government.

At her hearing, Applicant admitted under-reporting her episodes of drug use between 1998 and December 2002 in her interview with a special agent of the Defense Security Service, conduct which raises a security concern under ¶ E2.A5.1.2.3. She also admitted using marijuana several times between December 2002 and June 2004. She stated her last use of marijuana occurred after receiving the SOR from DOHA. These admissions raise additional concerns about Applicant's credibility and security worthiness.

Mitigating condition E2.A5.1.3.1 does not apply to the facts of this case. The information Applicant withheld is pertinent to a determination of her judgment, trustworthiness, and reliability. Only one other mitigating condition under Guideline E might be applicable to the instant case. The security concern raised by Applicant's disqualifying conduct could be mitigated if the falsification was an isolated incident, was not recent, and if the Applicant subsequently provided the correct information voluntarily. ¶E.2.A.5.1.3.2. Applicant provided some correct information when confronted by an investigator of the Defense Security Service in May 2003. However, she also provided false information to the investigator in her signed, sworn statement, thereby demonstrating on-going falsification and lack of candor. Applicant's disqualifying personal conduct is recent and not isolated. Accordingly, the allegation in subparagraph 2.a. of the SOR is concluded against the Applicant.

## **FORMAL FINDINGS**

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

Paragraph 1. Guideline H: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

### **DECISION**

In light of all of 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. Clearance is denied.

Joan Caton Anthony

Administrative Judge

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