

KEYWORD: Drugs

DIGEST: Applicant used marijuana approximately 300 times, mainly when he was in college. His usage continued after college, with his last use occurring in January 2005. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from his illegal drug usage. Clearance is denied.

CASENO: 05-05136.h1

DATE: 03/27/2006

DATE: March 27, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-05136

**DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

**APPEARANCES**

**FOR GOVERNMENT**

Robert E. Coacher, Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant used marijuana approximately 300 times, mainly when he was in college. His usage continued after college, with his last use occurring in January 2005. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from his illegal drug usage. Clearance is denied.

### **STATEMENT OF THE CASE**

On August 29, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding<sup>(1)</sup> it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On September 17, 2005, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

On November 28, 2005, Applicant received a complete copy of the government's file of relevant material (FORM) dated November 21, 2005. Applicant was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. On December 28, 2005, Applicant's response to the FORM was due. No response has been received. On January 23, 2006, I was assigned the case.

### **FINDINGS OF FACT**

The SOR alleges security concerns under the Guideline for Drug Involvement. Applicant admits to the following: he

used marijuana with varying frequency from about March 2001 until at least January 2005, he purchased marijuana as recently as 2004, and he may use marijuana in the future. Those admissions are incorporated herein as findings of fact. After thorough review of the whole record, I make the following additional findings of fact:

Applicant is 25 years old, has worked as a programmer analyst for a defense contractor since November 2000, and is seeking to obtain security clearance.

In September 2004, when Applicant completed his Security Clearance Questionnaire, Standard Form (SF) 86 (Item 4), he indicated he had used marijuana. He estimated he had used it approximately 300 times between November 2002 and July 2004. From September 1999 to May 2004, Applicant was a college student. He had previously been valedictorian of his 1999 high school class and first used marijuana in March 2001.

As a college student from January 2003 until May 2004, Applicant regularly used marijuana. He was using it on a "near-nightly" basis (Item 5, page 6). A friend supplied the marijuana and Applicant reimbursed his friend the cost.

Upon graduation from college in May 2004, Applicant decided he needed to act more responsibly and severely limited his use of marijuana. He stopped using until July 2004, when he bought a house and had friends visiting. In celebration of the occasion, marijuana was smoked. At the end of the evening, he realized he had broken his promise to himself to leave college habits behind. On December 31, 2004, New Year's Eve, Applicant shared some marijuana with friends. On January 15, 2005, approximately two weeks before his interview with the Office of Personnel Management (OPM) (Item 5), Applicant used marijuana.

Applicant has never received counseling concerning his usage. He has never been arrested for possession of marijuana or any other charge. Company policy required him not to report for work under the influence of alcohol or drugs. During his OPM interview, Applicant stated he had no plans to use marijuana again, but if he did it would be rare and occasional. He states he and his wife have decided to start a family and if "I haven't already stopped using marijuana for good, I will certainly do so at that time." (Item 5, page 9)

## **POLICIES**

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline.

Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guideline to be applied here is Guideline H, Drug Involvement.

### **BURDEN OF PROOF**

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of an applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate government's case. An applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(2)</sup>

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information to be resolved in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

### **CONCLUSIONS**

Under Guideline H, the security eligibility of an applicant is placed into question when that applicant is involved with illegal drugs. 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 E.2.A.8.1.1. From 2001 through January 2005, Applicant used marijuana approximately 300 times. Disqualifying Condition (DC) 1 (*Any drug abuse*) applies.

Applicant's marijuana usage occurred mainly when he was in college--1999 through May 2004. However, even though Applicant promised himself to put his college habits behind him, he has continued to use marijuana. His frequency is much less, but he continued to use marijuana after completing his security clearance applicant and up to two weeks prior to his OPM interview.

None of the Mitigating Conditions (MC) apply. His last known use occurred a year ago and is recent. MC 1 (*The drug involvement was not recent*) does not apply. With "near-highly" use in college, his usage could not be said to have been isolated or aberrational. MC 2 (*The drug involvement was an isolated or aberrational event*) does not apply.

Applicant has stated he had no plans to use marijuana again, but if he did it would be rare and occasional and if he has not stopped by the time he started a family, he certainly would do so at that time. Neither statement is a clear, unequivocal declaration not to use marijuana ever again. Even with his stated intent, he failed to maintain the promises he made to himself not to relapse to college habits. With the amount of use and recency, equivocal statements to refrain, without more, are insufficient to demonstrate an intent not to abuse illegal drugs in the future. MC 3 (*A demonstrated intent not to abuse any drugs in the future*) does not apply.

Applicant has never received counseling or treatment concerning his usage. Therefore, MC 4 (*Satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional*) does not apply.

Because none of the mitigating factors apply, I find against Applicant as to Drug Involvement.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

## **FORMAL FINDINGS**

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

Paragraph 1 Drug Involvement: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: 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 Applicant. Clearance is denied.

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**Claude R. Heiny**

**Administrative Judge**

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.
2. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15