

KEYWORD: Criminal Conduct, Drug Involvement, Personal Conduct

DIGEST: Applicant is a 25-year-old engineer-diver, employed by a defense contractor. Between 1998 and 2003, he experimented with marijuana and other drugs while in college. In 1999, he was arrested at least three times and charged with various criminal offenses. In 2003, he was terminated from a job after testing positive for marijuana. Applicant has successfully mitigated security concerns regarding criminal conduct and drug involvement. However, Applicant deliberately falsified an answer regarding his illegal drug use on his security clearance application. Applicant has failed to mitigate security concerns regarding personal conduct. Clearance is denied.

CASE NO: 05-06760.h1

DATE: 06/20/2006

DATE: June 20, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-06760

DECISION OF ADMINISTRATIVE JUDGE

JACQUELINE T. WILLIAMS

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 25-year-old engineer-diver, employed by a defense contractor. Between 1998 and 2003, he experimented with marijuana and other drugs while in college. In 1999, he was arrested at least three times and charged with various criminal offenses. In 2003, he was terminated from a job after testing positive for marijuana. Applicant has successfully mitigated security concerns regarding criminal conduct and drug involvement. However, Applicant deliberately falsified an answer regarding his illegal drug use on his security clearance application. Applicant has failed to mitigate security concerns regarding personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On October 24, 2003, Applicant applied for a security clearance and completed a Security Clearance Application (SF 86).⁽¹⁾ On January 31, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons Guideline J (Criminal Conduct), Guideline H (Drug Involvement), and Guideline E (Personal Conduct) why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted or revoked.

In a sworn, written statement, dated February 22, 2006, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing.⁽²⁾ Department Counsel prepared the government's written case on March 20, 2005, but it was not forwarded to Applicant until March 22, 2006. A complete copy of the file of relevant material (FORM)⁽³⁾ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Any such submissions were due by April 23, 2006. He chose not to respond. The case was assigned to me on ay 17, 2006.

FINDINGS OF FACT

Applicant admitted the factual allegations pertaining to criminal conduct under Guideline J (subparagraphs 1.a. through 1.c.), drug involvement under Guideline H (subparagraphs 2.a. through 2.e.), and personal conduct under Guideline E (subparagraph 3.a.). Those admissions are incorporated herein as findings of fact. Applicant denied the allegations in subparagraph 3.b. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 25-year-old engineer-diver, employed by a defense contractor. He earned a Bachelor's in Science in May 2002 from a state institute of technology.

As a college student, Applicant was arrested three times. On January 13, 1999, he was arrested for trespass on posted property. Adjudication was withheld. Applicant was then arrested on April 23, 1999, for soliciting prostitution, possession of drug paraphernalia, and resisting arrest without violence. He was fined \$518. He was also arrested on July 11, 1999, for driving under the influence (DUI), marijuana possession, and narcotic equipment possession. On September 23, 1999, the charges of marijuana possession and narcotic equipment possession were dropped. On October 27, 1999, the charge for DUI was reduced to reckless driving, and the charge was *nolle prossed*.

Also, while at college, Applicant experimented with marijuana. From 1998 through 2003, he used marijuana about two to three times per month. He purchased marijuana for his own use on several occasions between 2001 and 2003. Moreover, Applicant contributed about \$5.00 toward the purchase of the drug on two occasions. On two other occasions, during his junior year in college, he purchased one-quarter ounce of marijuana.

Marijuana was not Applicant's only experience with illegal drugs. In 2000, Applicant once used cocaine and psilocybin mushrooms. He also used ecstasy once, in both 2000 and 2002, and he contributed money toward the purchase of that ecstasy.

On or about April 2003, Applicant was terminated from his job after testing positive for marijuana. He stopped using marijuana when he was terminated from his job. ⁽⁴⁾

Applicant answered "yes" to Question 27 on his Security Clearance Application (SF 86) (*Your use of Illegal Drugs and Drug Activity - Illegal Use of Drug. Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used a controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenic*

(LSD, PCP, etc.), or prescription drugs?). He listed marijuana use three times between January 2003 and April 2003. He did not mention his use of marijuana, which started in 1998 through 2003, or his use of cocaine, psilocybin, and ecstasy.

Since he was terminated from his job, he has been employed by three different companies, all requiring drug tests. As a commercial diver, he is required to take a physical once a year, during which a drug test is administered. He has tested negative for all these tests.

Applicant stated the following about his drug use:

Issues concerning my improper or illegal involvement with drugs were all mistakes on my own behalf. I was young and curious, and subsequently made incorrect choices. I did not reveal the use of all habituates on my Security Clearance Application because it was my understanding that the mention of any drug use would raise concern and a formal investigation, including an interview would occur. [\(5\)](#)

Applicant says his behavior has changed now. He no longer associates with people who use drugs. He indicated that "I realize my mistakes and I am making continuous and positive steps to not make them again." [\(6\)](#)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁷⁾ The government has the burden of proving controverted facts.⁽⁸⁾ The burden of proof is something less than a preponderance of evidence.⁽⁹⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.⁽¹⁰⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹¹⁾

No one has a right to a security clearance⁽¹²⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹³⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹⁴⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹⁵⁾ 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.

Based upon consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline J (Criminal Conduct): *The Concern:* A history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness.

Guideline H (Drug Involvement): *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 authorized disclosure of classified information.

Guideline E (Personal Conduct): *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.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards.

Criminal Conduct

The record evidence reveals that Applicant has been arrested and charged with offenses on at least three occasions. Whether the charges were dropped to lesser offenses or adjudication was withheld, the underlying behavior that put Applicant in a position to be arrested remains significant. In 1999, Applicant was charged with numerous criminal offenses, including soliciting prostitution, possession of drug paraphernalia, and resisting arrest without violence, DUI, marijuana possession, and trespass. Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1 (*allegations or admission of criminal conduct, regardless of whether the person was formally charged*) and CC DC E2.A10.1.2.2 (*a single serious crime or multiple lesser offenses*) apply.

On the other hand, Applicant has matured since those charges against him in 1999. At the time, he was a teenager. Today, he is 25. There is no indication that he has been charged with any additional violations of the law during the intervening seven years. He has changed friends and now has a better perspective on life, one which does not include drug use or drug purchases. Criminal Conduct Mitigating Conditions (CC MC) E2.A10.1.3.1 (*the criminal behavior was not recent*) and CC MC E2.A10.1.3.6 (*there is clear evidence of successful rehabilitation*) both apply. Applicant has mitigated the security concerns caused by his criminal conduct. Accordingly, allegations 1.a. through 1.c. of the SOR are concluded for Applicant.

Drug Involvement

Applicant started using marijuana while at college. This use also included several purchases of the drug. Additionally, he also used cocaine and psilocybin mushrooms at least once. He used ecstasy at least once and purchased it as well. He tested positive for marijuana and was terminated from his job in April 2003. In his Answer he stated: "Regarding to [sic] my termination from [employer] consultants for testing positive for marijuana, again that was a mistake fully on my part. I have no excuse other than bad decision-making." That seemed to be a turning point for him, and he realized that as a diver, he was subject to random drug testing routinely and that his career was in jeopardy. He has had three drug tests since he tested positive, and all the results tested negative. Thus, Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1 (*any drug abuse*) and DI DC E2.A8.1.2.2 (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*) apply.

Applicant was a recreational user of drugs from 1998 to 2003. When he lost his job after testing positive for marijuana, he stopped abusing drugs. He has been drug-free for at least three years. Applicant is no longer willing to jeopardize his career because of his own drug use. He has matured. He is taking responsibility and control of his life, together with making positive choices about using or not using drugs. Applicant has matured and demonstrates his intent not to abuse drugs. Drug Involvement Mitigating Conditions (DI MC) E2.A8.1.3.1 (*the drug involvement was not recent*) and DI MC E2.A8.1.3.3 (*a demonstrated intent not to abuse any drugs in the future*) apply. Applicant has mitigated the security concerns caused by his drug involvement. Accordingly, allegations 2.a. through 2.e. of the SOR are concluded for Applicant.

Personal Conduct

Applicant falsified material facts on his SF 86, when he answered "yes" to Question 27 pertaining to prior illegal use of drugs. Applicant only partially answered Question 27 on the SF 86 and omitted material fact about his past drug use. Even though he listed that he had used marijuana three times between 2003 and April 2003, he failed to list his use of marijuana as far back as 1998 through 2002. He did not disclose his use of cocaine, psilocybin mushrooms, and ecstasy. Moreover, in his sworn statement, he indicated that he knew that a full disclosure of all of his past drug use of any kind could raise concern and a formal investigation, including an interview could occur. Applicant's falsification of his SF 86 casts serious doubt on his judgment, reliability, and trustworthiness. Moreover, he was terminated from his job after testing positive for marijuana. Personal Conduct Disqualifying Conditions (PC DC) E2.A5.1.2.1. (*reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*) and PC DC E2.A5.1.2. (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies. None of the Personal Conduct Mitigating Conditions applies. Applicant has failed to mitigate or overcome the government's case. The evidence leaves me with doubts as to Applicant's security eligibility and suitability. Accordingly, allegations 3.a. and 3.b. of the SOR are concluded against Applicant.

I have considered all the evidence in this case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I am persuaded by the totality of the evidence in this case that Applicant is now a mature individual, and has been drug-free since April 2003. However, it is unfortunate that he deliberately omitted relevant and material facts on his SF 86 to make sure that his past drug use was not a factor that could be considered. Truth, honesty, and reliability are paramount to being trusted with the nation's secrets. It is clearly not consistent with the national interest to grant Applicant a security clearance.

For the reasons stated, I conclude Applicant is not suitable for access to classified information.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline J (Criminal Conduct): FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Paragraph 2. Guideline J (Drug Involvement): FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: For Applicant

Subparagraph 2.e: For Applicant

Paragraph 3. Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Subparagraph 3.b: Against Applicant

DECISION

In light of all of the circumstances in this case, it is clearly not consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Jacqueline T. Williams

Administrative Judge

1. Item 3 (Security Clearance Application, dated October 24, 2003).
2. Item 2 (Applicant's Answer, dated February 22, 2006).
3. The Government submitted five items in support of the allegations.
4. Item 2, note 2, *supra*.
5. *Id.*
6. *Id.*
7. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
8. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
9. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
10. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, ¶ E3.1.15.
11. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15.
12. *Egan*, 484 U.S. at 531.
13. *Id.*
14. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
15. Executive Order 10865 § 7.