

KEYWORD: Drugs

DIGEST: Applicant is a 25-year-old systems engineer for a defense contractor. While in high school and college, and shortly thereafter, Applicant abused a wide variety of drugs, including marijuana, cocaine, heroin, LSD, ecstasy, psilocybin, Valium, Xanax, and Ketamine. Applicant stopped using all drugs other than marijuana in about 2000, and discontinued his use of marijuana in July 2003. Since then, he has remained drug-free and has excelled at his job. Although Applicant shows great promise, at this time he has failed to mitigate the security concerns arising from his long history of drug involvement. Clearance is denied.

CASENO: 04-00206.h1

DATE: 12/05/2005

DATE: December 5, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-00206

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Sabrina Redd, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 25-year-old systems engineer for a defense contractor. While in high school and college, and shortly thereafter, Applicant abused a wide variety of drugs, including marijuana, cocaine, heroin, LSD, ecstasy, psilocybin, Valium, Xanax, and Ketamine. Applicant stopped using all drugs other than marijuana in about 2000, and discontinued his use of marijuana in July 2003. Since then, he has remained drug-free and has excelled at his job. Although Applicant shows great promise, at this time he has failed to mitigate the security concerns arising from his long history of drug involvement. Clearance is denied.

STATEMENT OF THE CASE

On September 24, 2003, Applicant submitted an application for a security clearance. The Defense Office of Hearings and Appeals (DOHA) declined to grant a security clearance for Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On February 24, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under the Directive, specifically Guideline H, Drug Involvement.

Applicant answered the SOR in writing on March 10, 2005. He elected to have a hearing before an administrative judge.

The case was assigned to me on August 1, 2005. With the concurrence of Applicant and Department Counsel, I convened the hearing on October 11, 2005. The government introduced Exhibits 1 and 2. Applicant presented Exhibits A through O, and the testimony of three witnesses. Applicant also testified on his own behalf. DOHA received the final

transcript of the hearing (Tr.) on October 20, 2005.

FINDINGS OF FACT

Applicant admitted all the factual allegations in the SOR, with explanations. Applicant's Answer to SOR, dated March 10, 2005. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant is 25 years old. Ex. 1 at 1. He works as a systems engineer for a defense contractor. Tr. at 26.

Applicant began using illegal drugs when he was 17 years old. Tr. at 33. He asserts he was influenced by peer pressure, curiosity, and the desire to fit in with a certain social group. Ex. 2 at 1. He first experimented with marijuana in about 1997. He began using marijuana on an almost daily basis thereafter. *Id.* at 2.

In about May 1998, Applicant tried cocaine for the same reasons. *Id.* at 1. He used cocaine about 20 to 40 times over the course of the next 12 to 15 months. *Id.* at 2.

In June 1998, Applicant enrolled in college and majored in computer science. Ex. 1 at 2; Tr. at 43. While in college, Applicant held part-time jobs in restaurants, and served as a mathematics tutor. Ex. 1 at 3.

Between about early 1998 and early 1999, Applicant used several other illegal drugs, including heroin (10 to 30 times), lysergic acid diethylamide (LSD) (5 to 10 times), methylenedioxymethamphetamine (MDMA, or "ecstasy") (15 to 35 times), psilocybin (hallucinogenic mushrooms) (1 to 5 times), Valium (1 to 5 times), Xanax (1 to 5 times), and Ketamine (1 time). *Id.* at 2. On two or three occasions, Applicant purchased marijuana and sold it to his friends for a profit, believing he was doing them a favor. Tr. at 36-37. On two occasions, the police stopped the vehicle in which Applicant was riding as a passenger and searched for marijuana; Applicant and his friends were released when the searches found no drugs. Tr. at 38.

Applicant gradually discontinued his drug use. According to Applicant, "Approximately mid-to-late 1999, I stopped

using all drugs except for LSD, MDMA, mushrooms and marijuana. By mid 2000, I stopped using MDMA, and by late 2000, I ceased using all illegal drugs except for marijuana." Ex. 2 at 2.

In December 2002, Applicant completed his college studies. Ex. 1 at 2. Between about March 1998 and August 2003, he worked installing wiring for low voltage electrical systems, such as high performance stereos, high definition television, and video surveillance systems. *Id.*

Applicant stopped using marijuana in about July 2003, when the opportunity arose for employment with the DoD contractor. *Id.* at 2, 3; Tr. at 18, 49. He did not seek out or participate in any drug rehabilitation programs. Tr. at 48. Applicant stated that after discontinuing his drug use, he felt a dramatic rise in his energy, motivation, focus, and productivity. Tr. at 18. He also cut off all contact with friends and acquaintances who were still using drugs. Tr. at 19. Shortly thereafter, a former friend was murdered in his own apartment in a drug-related attempted robbery; the experienced reinforced Applicant's resolve to remain drug-free. Tr. at 21.

The defense contractor hired Applicant in August 2003. Tr. at 49. He submitted an SF 86, Security Clearance Application, on September 24, 2003. Ex. 1 at 1. Question 27 on the SF 86 asked whether Applicant had illegally used drugs, including marijuana, since he was 16 years old or within the last seven years, whichever was shorter. *Id.* at 9. Applicant answered "Yes," and properly listed the illegal drugs he had taken. *Id.* When questioned by a security investigator, Applicant candidly related the nature and extent of his drug-abuse history. Ex. 2.

Applicant has been very successful in his employment with the defense contractor. Tr. at 23. His duty performance was rated highly (Tr. at 25), and he was promoted early (Tr. at 26-27; Ex. D). He won awards and special recognition for his valuable contributions to several projects. Tr. at 23-25; Exs. A, B, C, F, G. He is enrolled in the mentor program, and works with a senior leader in developing long-range career plans. Tr. at 29; Exs. K, L, M. Applicant is also taking advantage of the employer's tuition reimbursement program, and is pursuing his master's degree in intelligence systems. Tr. at 30; Exs. H, I. Applicant's supervisor praises his duty performance, honesty, and trustworthiness, and recommends him for a security clearance. Tr. at 62, 65. His mentor opined that Applicant was trustworthy and ethical and did not present a security risk. Tr. at 82. The Operations Manager for the DoD contractor described the company's substance abuse policy (Tr. at 89) and indicated Applicant was one of few employees whose work performance merited company support during the security clearance process. Tr. at 92-93, 97-98.

POLICIES

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

Guideline H, Drug Involvement. 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. Directive, ¶ E2.A8.1.1.1.

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

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. *Id.*

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. 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 (App. Bd. Dec. 19, 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2.

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the

President has established for issuing a clearance.

CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Under the Directive, ¶ E2.A8.1.2.1, any drug abuse could raise a security concern. The Directive defines "drug abuse" as "the illegal use of a drug or the use of a legal drug in a manner that deviates from approved medical direction." Directive, ¶ E2.A8.1.1.3. The evidence shows Applicant wrongfully consumed numerous illegal drugs on multiple occasions between 1997 and July 2003. This potentially disqualifying condition applies.

Paragraph E2.A8.1.2.2 of the Directive provides that "illegal drug possession, including ... purchase, sale or distribution" may be disqualifying. Applicant illegally purchased marijuana and distributed it to his friends on about two occasions. I find this potentially disqualifying condition applies.

It is possible to mitigate the security concerns that arise from drug involvement. Under the Directive, ¶ E2.A8.1.3.1, it may be mitigating where, "[t]he drug involvement was not recent." The Directive does not define the term "recent." The determination of recency depends upon all the relevant circumstances of each case. In this case, Applicant routinely used and possessed marijuana from age 17 until age 23 (between 1997 and July 2003). He also used a wide variety of serious drugs on numerous occasions between about 1998 and 1999. Applicant discontinued his use just before accepting employment with the DoD contractor. He has remained drug-free for two years since then. The two years of abstinence is relatively short, compared to the history of about six years of frequent drug abuse. I conclude Applicant's drug involvement was recent, therefore this mitigating condition does not apply.

Paragraph E2.A8.1.3.2 indicates that it may be mitigating where the drug involvement "was an isolated or aberrational event." The available evidence shows Applicant abused drugs on numerous occasions spanning several years, therefore I find this potentially mitigating condition does not apply.

"A demonstrated intent not to abuse drugs in the future" may also be mitigating. Directive, ¶ E2.A8.1.3.3. The evidence indicates Applicant frequently used serious drugs for many years. He discontinued that use gradually, on his own initiative, and stopped using all illegal drugs except marijuana in about 2000. After discontinuing his use of marijuana in

2003, Applicant realized the benefits of living drug-free and has resolved to remain so in the future. Applicant has not participated in a rehabilitation program for substance abuse. Weighing all the evidence, Applicant has convinced me that this potentially mitigating condition applies.

Finally, the Directive, ¶ E2.A8.1.3.4, provides that it may be mitigating where the evidence demonstrated "[s]atisfactory 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." As noted above, Applicant has not completed a drug treatment program. I conclude this mitigating condition does not apply.

I balanced the potentially disqualifying and mitigating conditions in light of the "whole person" concept. Applicant is a young man who entered the professional workforce about two years ago, and has performed exceptionally well. Applicant has a long history of serious drug abuse, which raises substantial security concerns. To his credit, he discontinued the abuse on his own, and has remained drug-free for two years. Although Applicant shows great promise, it is a little too early for me to be convinced that his history of drug abuse will not raise security concerns in the future. I conclude Applicant has not mitigated the security concerns arising from his drug involvement at this time.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline H: Against APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: 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.

Michael J. Breslin

Administrative Judge