

KEYWORD: Drugs; Personal Conduct

DIGEST: This 45-year-old software engineer has a history of marijuana use beginning in 1996 and continuing to at least 2003. He knowingly falsified his answers to drug-related questions 27 and 28 on two (2001 and 2003) security clearance applications. Mitigation has not been established. Clearance is denied. CASENO: 04-01044.h1

DATE: 11/02/2005

DATE: November 2, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-01044

**DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

**APPEARANCES**

**FOR GOVERNMENT**

Sabrina Elaine Redd, Department Counsel

**FOR APPLICANT**

*Pro Se*

## **SYNOPSIS**

This 45-year-old software engineer has a history of marijuana use beginning in 1996 and continuing to at least 2003. He knowingly falsified his answers to drug-related questions 27 and 28 on two (2001 and 2003) security clearance applications. Mitigation has not been established. Clearance is denied.

## **STATEMENT OF THE CASE**

On March 15, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons

why DOHA could not make the preliminary affirmative finding required under the Directive that it

is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and

determine whether a clearance should be granted, denied or revoked.

On April 7, 2005, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge on the written record, i.e., without a hearing. Department Counsel issued a File of Relevant Material (FORM) on June 15, 2005. The Form instructed Applicant that any response to the FORM had to be submitted within 30 days of its receipt by Applicant. Any response was due by July 23, 2005, but no submission to the FORM has been received. The matter was assigned to me for resolution on August 1, 2005.

## **FINDINGS OF FACT**

Applicant is a 45-year-old employee of a defense contractor. The SOR contains three allegations, 1.a. - 1.c., under Guideline H (Drugs), and four allegations, 2.a.- 2.d., under Guideline E (Personal Conduct). Applicant admits all seven allegations, with comments and explanations. All admitted allegations are accepted and made Findings of Fact.

After considering the totality of the evidence of record in the FORM, I make the following FINDINGS OF FACT as to each SOR allegation, based on the contents of the FORM, including Applicant's sworn statement and his response to the SOR. No response to the FORM was submitted.

#### *Guideline H (Drugs)*

Applicant:

1.a. - used marijuana, with varying frequency, from at least 1996 to March 2003;

1.b. - continued to use marijuana after being issued a Department of Defense (DoD) Top Secret security clearance on June 1, 1991, and a DoD Secret security clearance on September 20, 2001;

1.c. - has not attested that he would not use marijuana in the future

#### *Guideline E (Personal Conduct)*

In his security clearance application (SF 86) of November 30, 2001, Applicant falsified material facts in his answers to Questions:

2.a. - **27. Your Use of Illegal Drugs and Drug Activity - Illegal Use of Drugs** [since the age of 16 or in the last seven years]. Applicant answered "No," although he knew he used marijuana from 1996 to 2001, as alleged in 1.a., above.

**2.b. - 28. Your Use of Illegal Drugs and Drug Activity - Use in Sensitive Positions** [since the age of 16 or in the last seven years]. Applicant answered "No," although he knew he used marijuana after being granted a DoD security clearance in 1991 and again in 2001, as set forth in 1.b., above

In his security clearance application (SF 86) of August 22, 2003, Applicant falsified material facts in his answers to Questions:

**2.c. - 27. Your Use of Illegal Drugs and Drug Activity - Illegal Use of Drugs** [since the age of 16 or in the last seven years]. Applicant answered "Yes," and cited marijuana use on three occasions from January 1, 2002 to March 1, 2003, although he knew he used marijuana from 1996 to 2001, as alleged in 1.a., above; and .

**2.d. - 28. Your Use of Illegal Drugs and Drug Activity - Use in Sensitive Positions** [since the age of 16 or in the last seven years]. Applicant answered "No," although he knew he used marijuana after being granted a DoD security clearance in 1991 and again in 2001, as set forth in 1.b., above

### POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Because Applicant chose to have this matter decided without a hearing and without submitting any additional information in response to the FORM, all credibility determinations and findings of fact are necessarily based entirely on the contents of the FORM.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

## CONCLUSIONS

1.a. - This 45-year-old Applicant's admitted marijuana use began in 1996 and continued until at least March 2003. His last statement about his marijuana use is found in his April 7, 2005 response to the SOR (Item 3).

1.b. - His explanation for his drug use during the period when he held a security clearance is that "the majority of time I have used it was during periods when I was not working on any classified information" and did not lead to "losing any kind of self control " (*Id.*). This explanation suggests that on at least some occasions, he did use marijuana at work and, in any case, the questionable judgment arises from his use of marijuana, specifically after obtaining a security clearance, regardless of the surroundings.

1.c. - He stated that he actually told the Defense Security Service (DSS) agent that he "did not plan on using marijuana in the future, but could not state that [he] would absolutely positively, NOT use it." He added that if he was to "state that I will NEVER do it, I would not be subjected to closer scrutiny in regard to this subject" (Item 3). It is not clear exactly what this last language means, but it is obviously not a stated intention never to use illegal drugs in the future.

Considering the above evidence, Applicant's claim that he has not used marijuana since March 2003 is not supported by any other evidence and lacks substantial credibility.

Disqualifying Conditions (DC)- (1) any drug abuse and (2) illegal drug possession are clearly applicable. At the same time, Applicant has not established the applicability of any of the parallel mitigating conditions (MC). I find that his drug use is still "recent" (MC 1), was not an isolated event (MC 2), and there is no "demonstrated intent not to abuse any drugs in the future" (MC 3).

#### *Guideline E (Personal Conduct)*

Allegations 2.a and 2.c. pertain to the same question (27) and 2.b. and 2.d. pertain to the same question (28) on two chronologically separate security clearance applications, the first in 2001 and the second in 2003.

In all cases, Applicant knowingly answered falsely. As to the 2001 SF 86, his explanation, simply stated, is that he "regretfully decided to take the path of least resistance" when he answered each question (Item 3). As to the 2003 SF 86, in his response to the SOR, he admits he did not tell the complete truth in his 2003 answer to Question 27 His explanation, that he did not remember the full extent of his marijuana use at the time, lacks credibility, considering he omitted use of marijuana only a year or so earlier. His final statement in Item 3 is that he made full disclosure only when questioned by the DSS agent in November 2003.

Disqualifying Condition (1) - the deliberate omission, concealment, or falsification of relevant and material facts from a personnel security questionnaire, is applicable. Applicant has not demonstrated that any of the parallel mitigating conditions exist. Most important, he did not make a prompt good-faith effort to correct the falsifications until confronted by the DSS agent in November 2003.

In summary, all of the Government's concerns about Applicant's marijuana use and falsifications are established by the record, and none have been mitigated or extenuated by Applicant. The record makes a compelling case that Applicant does not currently possess the good judgment, reliability, and trustworthiness required of anyone seeking access to the nation's secrets.

### **FORMAL FINDINGS**

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

#### **Guideline H (Drugs) Against the Applicant**

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Guideline E (Personal Conduct) Against the Applicant

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against the Applicant

Subparagraph 2.c. Against the Applicant

Subparagraph 2.d. Against the 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.

**BARRY M. SAX**

**ADMINISTRATIVE JUDGE**