

KEYWORD: Drugs; Personal Conduct

DIGEST: Applicant used and purchased marijuana on a fairly regular basis from 1978 to 1996, and again from about 1999 to the beginning of 2002. He last used the substance in December 2002. Applicant has mitigated the security concerns raised by his past use of marijuana. Clearance is granted.

CASENO: 04-01451.h1

DATE: 01/21/2005

DATE: January 21, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-01451

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant used and purchased marijuana on a fairly regular basis from 1978 to 1996, and again from about 1999 to the beginning of 2002. He last used the substance in December 2002. Applicant has mitigated the security concerns raised by his past use of marijuana. Clearance is granted.

STATEMENT OF THE CASE

On July 2, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline H for drug involvement, and Guideline E for personal conduct.

Applicant submitted a sworn answer to the SOR that was received by DOHA on August 2, 2004, requested a hearing, and admitted the allegations contained in SOR subparagraphs 1.a., 2a., and 2.b, but denied those contained in subparagraphs 1.b., and 1.c.

This case was assigned to another administrative judge on August 12, 2003, and reassigned to me on September 1, 2004, due to caseload considerations. A notice of hearing was issued on November 4, 2004, scheduling the hearing for December 1, 2004. The hearing was conducted as scheduled. The government submitted three documentary exhibits that were marked as Government Exhibits (GE) 1-3, and admitted into the record without objection. Applicant testified, called three witnesses to testify on his behalf, and submitted fifteen documentary exhibits that were marked AE 1-15, and admitted into the record without objection. The transcript was received December 13, 2004.

FINDINGS OF FACT

Applicants' admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 38 years old, has been married since June 1991, and has three children, ages nine, seven, and five. Applicant completed college in May 1991, and was awarded a bachelor of science degree in mechanical engineering. He has been employed by the same company since August 1991, and has risen to the position of project manager.

Applicant submitted the testimony of, and numerous letters of reference from, family members, co-workers, and work supervisors. All his references have known him for substantial periods of time, many since he was either a child or very young man. They all speak of him in glowing terms, and indicate he has proven himself to be a skilled and talented engineer who is considered to have impeccable judgment. They also attest to his reputation for being dependable, honest, and trustworthy. Most of his references had at least some knowledge of the reason for issuance of the SOR, although not the full extent of his use of a controlled substance.

Applicant's children have all been diagnosed as suffering from autism, the oldest in the spring of 1998, the second oldest in 2000, and the youngest in 2001. Applicant and his wife have aggressively worked to help their children deal with the disease. Their efforts have included arranging for the provision of intensive in-home services by professionals, the creation of special classrooms within their house, the addition of space in the house to allow for the provision of services, and the expenditure of many hours of time working with the children themselves.

According to Applicant, his wife, and a number of his references, the situation with his children has created a great deal of stress for Applicant. However, Applicant has more recently learned to manage the stress by, among other things, engaging in rock climbing a couple of times a week at a gymnasium. Applicant's wife testified she believes he is presently happy at work, stable in life, and happier with his life than she has ever known him to be.

Applicant began using marijuana in June 1978 when he was 11 years old. He used the substance on average twice a week between that time and 1990, when he reduced his consumption to once every couple of weeks. He was charged with possession of drug paraphernalia in May 1983, and ordered to perform community service. Applicant would purchase marijuana for his personal consumption in amounts ranging from one-quarter to one-half ounce, paying between \$50.00 and \$100.00 for the purchases. His normal pattern was to consume the marijuana alone, although on a few occasions he smoked it with his wife, who no longer uses it, or with friends at social gatherings.

Applicant stopped using marijuana completely in 1996, when his employer instituted a random drug testing program. He resumed the use of marijuana in approximately 1999, in part as an escape mechanism from the health issues affecting his children, and in part because he realized his employer had never actually subjected any employee to a random drug screen. From 1999 to early 2002, Applicant used marijuana two to three times a week. He stopped using the drug again in January or February 2002, when his employer announced reinstatement of the random drug testing policy. He used marijuana one last time in December 2002. Applicant was administered an unannounced work-related drug test in October or

November 2004 that was negative for the presence of drugs in his system.

Applicant credibly asserts he will not use marijuana in the future. Although he still has friends who he knows once used marijuana, he has made it clear to them he does not use the substance and doesn't want to be around where it is used. He also does not know if any of his old friends still abuse marijuana themselves. Applicant's wife testified she had on prior occasions spoken with him about his use of marijuana, and she believes he will not abuse the substance in the future, partly because of the reinstatement of drug testing at work, and partly because of the current stability and happiness he has found in life. She also doesn't think he associates with friends who abuse marijuana.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance 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 ¶ 6.3.1 through ¶ 6.3.6 of the Directive. 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. Considering the evidence as a whole, Guideline H, pertaining to drug involvement, and Guideline E, pertaining to personal conduct, with their respective DC and MC, are most relevant in this case.

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.⁽²⁾ The government has the burden of proving controverted facts.⁽³⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence⁽⁴⁾, although the government is required to present substantial evidence to meet its burden of proof.⁽⁵⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁶⁾ 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.⁽⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

No one has a right to a security clearance⁽⁹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹¹⁾ **CONCLUSIONS**

Under Guideline H, illegal drug involvement raises questions about an individual's willingness or ability to protect classified information. Involvement with or use of an illegal drug indicates unwillingness or inability to abide by the law. Cleared employees must respect regulations

whether they agree with them or not. If they do not respect the rules on illegal substances, they may not respect the rules designed to protect classified information.

Applicant used and purchased marijuana between 1978, when he was 11 years old, and 1996, when he was 30 years old, ranging from using the substance twice a week to once every couple of weeks. He again used the drug between 1999 and 2002, when he decided to stop abusing the substance all together. Disqualifying Conditions (DC) 1: *Any drug abuse*; and DC 2: *Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution* apply.

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Applicant's use of marijuana, especially since undertaking employment with his current employer in 1991, demonstrated extremely poor judgment on his part and placed him in a vulnerable position had his use of the substance been discovered. DC 4: *Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail*; and DC 5: *A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency* apply.

Having viewed Applicant's demeanor, appearance, and manner of testifying, and giving due consideration to his work history, and the letters of reference and the testimony of the witnesses he offered, I find credible his assertion that his life is now completely focused on the well being of his family, that he has not used marijuana since December 2002, and that there is no longer any room in his life for drugs of any kind. I also accept as true that his return to using marijuana from 1999 to 2002 was largely caused by the stressful situation he found himself in with his children. Mitigating Conditions (MC) 1: *The drug involvement was not recent*; and MC 3: *A demonstrated intent not to abuse drugs in the future* under Guideline H, and MC 5: *The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress* under Guideline E apply.

In all adjudications the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Considering all relevant and material facts and circumstances present in this case, including Applicant's character references, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has overcome the case against him and satisfied his ultimate burden of persuasion. Guidelines H and E are decided for Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline H: For the Applicant

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

SOR ¶ 2-Guideline E: For the Applicant

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id* at 531.

