

KEYWORD: Drugs

DIGEST: Applicant's abuse of marijuana from 1990 to November 2003 was not mitigated where his drug use was recent, was not isolated, and where the record evidence was insufficient to demonstrate an intent to refrain from illegal drug use in the future, particularly where his marijuana use continued after he applied for a clearance in October 2003. Clearance denied.

CASENO: 04-01453.h1

DATE: 03/31/2006

DATE: March 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-01453

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's abuse of marijuana from 1990 to November 2003 was not mitigated where his drug use was recent, was not isolated, and where the record evidence was insufficient to demonstrate an intent to refrain from illegal drug use in the future, particularly where his marijuana use continued after he applied for a clearance in October 2003. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 18 March 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of illegal drug use⁽¹⁾. He answered the SOR 18 April 2005, and requested a decision without hearing. He did not respond to DOHA's 4 January 2006 File of Relevant Material (FORM). The record closed 5 February 2006, when his response was due. DOHA assigned the case to me 2 March 2006.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR; accordingly, I incorporate the admissions as findings of fact.

Applicant--a 33-year-old senior engineering geologist employed by a defense contractor since April 2003--seeks access to classified information. He has not previously held a clearance.

When Applicant completed his clearance application in October 2003, he reported occasional use of marijuana within the last seven years (question 27). In a December 2003 sworn statement, he reported first using marijuana in 1990. From 1992 to 1996, his use evolved from monthly to weekly, then daily. From 1996 to 1997, he used weekly; from 1997 to 1998, monthly; from 1999 to 2000, weekly; and from 2000 to 2003, quarterly. He last used marijuana twice in November 2003, after applying for his clearance. He bought user amounts of marijuana on occasion, and sometimes contributed to its purchase. He used marijuana because he liked its effect on him.

In addition to using marijuana, from 1993 to 1994 he experimented with cocaine, ecstasy, and LSD (twice each), and hallucinogenic mushrooms (thrice). He has now stated an intent to abstain from drug use in the future. The record contains no information on his character or work record.

POLICIES

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline H (Drug Involvement).

BURDEN OF PROOF

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government. ⁽²⁾

CONCLUSIONS

The government established a Guideline H case, and the Applicant has not mitigated the security concerns. Applicant was a recreational user of marijuana from approximately 1990 to at least November 2003. ⁽³⁾ Contemporaneously with his illegal drug use, he purchased marijuana for his personal use. Between 1993 and 1994, he experimented with ecstasy, LSD, hallucinogenic mushrooms, and cocaine. Clearly, the illegality of the conduct did not affect Applicant's decision to use illegal drugs. Nor did concerns about his job or his clearance, as he used marijuana after going to work for his employer and applying for a clearance.

Applicant meets none of the mitigating conditions for drug involvement. His drug use is recent, ending--at best a month after he applied for his clearance. ⁽⁴⁾ His drug use was not isolated or aberrational. ⁽⁵⁾ His use of cocaine, hallucinogenic mushrooms, LSD and ecstasy was experimental, and confined to a period of time when his marijuana use was beginning to increase. Clearly, marijuana was his drug of choice. Even with his stated intent not to use, he has not demonstrated an intent to refrain from drug use in the future. ⁽⁶⁾ The record contains little beyond this statement to confirm an intent to refrain from illegal drug use. Simply put, the Applicant has the burden of demonstrating this intent and has provided no evidence to rebut the unfavorable inferences of his thirteen years of drug abuse. Accordingly, I resolve Guideline H. against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline H: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: For Applicant

Subparagraph d: For Applicant

Subparagraph e: For Applicant

Subparagraph f: For 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 denied.

John Grattan Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
3. E2.A8.1.1.1. 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.

E2.A8.1.2.1. Any drug abuse (see above definition); E2.A8.1.2.2. Illegal drug possession, including . . . purchase,

4. E2.A8.1.3.1. The drug involvement was not recent;
5. E2.A8.1.3.2. The drug involvement was an isolated or aberrational event;
6. E2.A8.1.3.3. A demonstrated intent not to abuse any drugs in the future;