

KEYWORD: Drugs; Personal Conduct

DIGEST: Applicant is a 25-year-old female who has worked for a defense contractor since July 2003. While in college, Applicant used marijuana and experimented with two other illegal substances. In addition, she was present during a 2003 drug raid, although she was neither in possession of an illegal substance nor the subject of the investigation. Since giving up drugs in 2002, she has changed her priorities and her criteria for friendships. Her personal maturation since giving up drugs and her current drug-free lifestyle have mitigated security concerns. Clearance is granted.

CASENO: 04-01459.h1

DATE: 07/14/2005

DATE: July 14, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-01459

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Stephanie Hess, Esq., Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant is a 25-year-old female who has worked for a defense contractor since July 2003.

While in college, Applicant used marijuana and experimented with two other illegal substances. In addition, she was present during a 2003 drug raid, although she was neither in possession of an illegal substance nor the subject of the investigation. Since giving up drugs in 2002, she has changed her priorities and her criteria for friendships. Her personal maturation since giving up drugs and her current drug-free lifestyle have mitigated security concerns. Clearance is granted.

STATEMENT OF THE CASE

On January 19, 2005, the Defense Office of Hearings and Appeals (DOHA), 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, issued a Statement of Reasons (SOR). That SOR detailed why, pursuant to Guideline H (Drug Involvement) and Guideline E (Personal Conduct), it could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. In response, by letter of February 10, 2005, Applicant admitted to all but one allegation contained in the SOR ⁽¹⁾ and requested a hearing on the record. I was assigned this matter of April 27, 2005. By Notice of Hearing dated May 12, 2005, a hearing was scheduled for June 17, 2005, at Arlington, Virginia.

At the hearing, the Government introduced three exhibits marked as GE-1 through GE-3, which were accepted without objection; Applicant introduced four exhibits marked as AE-A through AE-D, which were similarly accepted without objection. Neither side presented witnesses. As a preliminary issue, the Government moved to amend subparagraph 1.a of the SOR to reflect that Applicant's marijuana use continued from approximately August 1998 to October 2002, not, as originally alleged, to November 2003. Applicant did not object and the motion was granted. With this amendment, Applicant constructively admitted to all allegations contained in the amended SOR. ⁽²⁾ I received the hearing transcript on June 27, 2005.

FINDINGS OF FACT

Applicant has admitted to the allegations set forth in the SOR. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is a 25-year-old single female who has worked for a defense contractor since July 2003. After several years of study and outside work, she received her Bachelor's degree in 2002. She similarly worked throughout her graduate program and secured her present employment shortly before receiving her Master of Science degree in Engineering in August 2003.

Applicant began her undergraduate studies in August 1998 and she smoked marijuana on random occasions in college until she gave up drugs in October 2002.⁽³⁾ Her usage was social and, on occasion, she would contribute up to \$20 toward its purchase. In 2000, she also tried cocaine three times and hallucinogenic mushrooms twice. She was under the influence of alcohol during these experiments and neither drug inspired her to continue with its usage. In October 2002, while conducting graduate studies, she made the conscious decision to stop using drugs. She was motivated to stop because she was trying to obtain a serious job in design engineering, because she was working and socializing in more professional, adult circles, and because the drug usage did not comport with her image of a mature professional. Indeed, at the suggestion of her roommate, who she considers to be a role-model, she substituted drug use with physical activity. This pursuit led to her certification in several intensive areas, including cardio-aerobics, kick-boxing, Pilates, and cycling. Having maintained this new self-image and lifestyle for the past few years, Applicant has no intention to ever return to drug use in the future.⁽⁴⁾

Applicant admits that in her past she knew people who abused, bought, or sold drugs. Indeed, a former beau used and sold drugs, but they broke up in 1999 and she has not seen him since 2001. Moreover, although some of her early drug use was the result of wanting to fit in, she no longer feels susceptible to such pressure.⁽⁵⁾ Having grown increasingly intolerant of drugs and those who abuse them, she has redefined her friendships so as to socialize only with those who are drug-free. While it is true that as recently as April 2004 she still had some contact with those she knew used drugs or suspected of current drug use (e.g., chance encounters at the gym or within the community), such contact was limited, unavoidable, and not social in nature.⁽⁶⁾ She does not permit drug use in her home or tolerate drug use in her presence.

In the summer of 2003, Applicant went home to visit her parents and made plans to visit with a childhood girlfriend who was also returning home for a visit. For logistical convenience, the friend suggested they initially meet at the home of the friends' brother. They arrived in separate cars with differing out-of-state license plates. The police, suspecting drug activity, conducted a raid.⁽⁷⁾ After having her person and automobile subject to search, one of the officers explained that the house had been under observation for possible crystal methamphetamine trafficking.⁽⁸⁾ The house-search yielded one arrest and one marijuana cigarette. The incident and her friend's proximity to those suspected of drug dealing, however, motivated Applicant to sever the friendship.

Applicant gave up drugs a little less than three years ago. Since that time, she has demonstrated her intent to stay clear of drugs, altered her standards for social peers, turned to athletics as a physical outlet, earned a master's degree, successfully held a position requiring both initial and random drug testing for two years, and recently become engaged to a professional who supports her views regarding illegal drugs and drug usage.⁽⁹⁾ Additionally, she was recently

accepted into a competitive Ph.D. program in bio-medical engineering located near her fiancée's community. It is her hope to combine her doctoral specialty with her commitment to cardiovascular fitness.

Since her last interview in April 2004, she has not witnessed any drug related activity. While she, like her fiancée, is a social drinker, she cannot conceive of any scenario under which she would again succumb to drugs. The Government has expressed its belief that Applicant is "living a life that is drug free and unassociated with the Government's concerns" and that her explanations at the hearing were "enough to mitigate the Government's security concerns."⁽¹⁰⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, these adjudicative guidelines are subdivided into those that may be considered in deciding whether to deny or revoke one's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to determine one could still be eligible for access to classified information (Mitigating Conditions).

In application, an Administrative Judge is not strictly bound to the adjudicative guidelines. As guidelines, they are but part of an amalgam of elements for the Administrative Judge to consider in assessing an applicant in light of the circumstances giving rise to the SOR, as well as in assessing the applicant as a whole. The concept of the "whole person" means that all available, reliable information about the person - whether it is good or bad, present or past - should be considered in making a fair, impartial, and meaningful decision as to his or her suitability to hold a security clearance. To that end, Enclosure 2 also sets forth factors to be considered during this part of the adjudicative process, including: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

After a full and thorough examination, however, the final assessment must comport with the considerable gravity of the final decision. There is no right to a security clearance⁽¹¹⁾

and one seeking access to classified information must be prepared to enter into a fiduciary relationship with the United States Government that is inherently predicated on trust and confidence. Therefore, when the facts proven by the Government raise doubts as to an applicant's judgment, reliability, or trustworthiness, the applicant has the heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the

side of denials."⁽¹²⁾ Therefore, any doubts will be resolved in favor of the national security, not the applicant.

Additionally, it should be noted that Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Therefore, nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism.

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

Guideline H - Drug Involvement. *The concern.* The 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.⁽¹³⁾

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.⁽¹⁴⁾

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 section below.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all legal precepts, factors, and conditions, including those described briefly above, I find the following with respect to the allegation set forth in the SOR:

With respect to Guideline H (Drug Involvement), the Government has established its case. Applicant admits to the six

allegations contained in the amended SOR under this Guideline and, specifically, to having used, possessed, and contributed to the purchase of illegal drugs. Such incidents raise a genuine security concern with regard to Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1 (*[a]ny drug abuse*) and DI DC E2.A8.1.2.2 (*[i]llegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*). Similarly, Applicant has admitted that she has known and socialized with individuals involved with illegal drugs. Such associations also raise a genuine security concern with regard to Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.6 (*[a]ssociation with persons involved in criminal activity*).

With disqualifying conditions thus established, the burden shifts to Applicant to mitigate the security concerns raised. At the hearing, Applicant demonstrated that her drug involvement ended in October 2002. In calendrical terms, this was not quite three years ago. Given Applicant's personal growth and life changes in that time, however, I am in agreement with Department counsel that such usage was part of Applicant's past, and is not part of her current life. [\(15\)](#)

Therefore, I find that her drug usage was not recent and that Drug Involvement Mitigating Condition (DI MC) E2.A8.1.3.1 (*[t]he drug involvement was not recent*) applies. Moreover, she has similarly demonstrated her resolve to maintain her healthy lifestyle and to remain drug free. Therefore, I find that DI MC E2.A8.1.3.3 (*[a] demonstrated intent not to abuse drugs in the future*) applies. Consequentially, I find for Applicant with regard to paragraph 1 of the SOR.

With regard to Guideline E and Applicant's personal conduct, she has purposefully distanced herself from people involved with, and situations involving or tending to involve, drugs and drug abuse. Her past drug usage is apparently no more a secret than are her current feelings about those who partake. Notably, she no longer feels susceptible to social pressures regarding drugs or their tolerance. Since she has not even witnessed any drug activity since April 2004, her objective has been successfully attained. Given all these efforts, I find that PC MC E2.A5.1.3.5 (*[t]he individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*) applies. Furthermore, I find that her adherence to her healthy lifestyle, and her concerted efforts to eschew drugs and those who choose to use them, give rise to PC MC E2.A5.1.3.7 (*[a]ssociation with persons involved in criminal activities has ceased*). Similarly, I find subparagraph 2.a in Applicant's favor.

Finally, as to her presence at the site of a drug raid, Applicant's testimony is highly credible and her explanation is logical. The incident was simply a case of being in the wrong place at the wrong time. Neither the incident nor Applicant's behavior there brings disrepute to her personal conduct or character. More importantly for this proceeding, the incident does not, by itself, give rise to a disqualifying condition. I, therefore, find subparagraph 2.b in Applicant's favor.

I have considered the record evidence and considered Applicant using the "whole person" concept. Applicant is a young professional who, at an even younger age, had the maturity and foresight to turn away from the drug culture too often prevalent within the halls of academe, and turn toward the culture of responsible adulthood. Her depiction of this hegira is both credible and laudatory, and her visible excitement toward her future prospects is well deserved. She has met her burden with regard to mitigating the disqualifying conditions raised under both Guideline H (Drug Involvement) and Guideline E (Personal Conduct). Therefore, I find that Applicant has, through evidence of extenuation and explanation, successfully mitigated or overcome the Government's case.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.2.5 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H: FOR THE APPLICANT

Subparagraph 1.a For the Applicant

Subparagraph 1.b For the Applicant

Subparagraph 1.c For the Applicant

Subparagraph 1.d For the Applicant

Subparagraph 1.e For the Applicant

Subparagraph 1.f For the Applicant

Paragraph 2, Guideline E: FOR THE APPLICANT

Subparagraph 1.a For the Applicant

Subparagraph 1.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 a security clearance for Applicant.

Arthur E. Marshall, Jr

Administrative Judge

1. Under the SOR, Guideline H included six allegations, of which Applicant denied the first, but admitted to the remaining six; Guideline E included two allegations, to which she admitted both. *See Applicant's Response to the SOR (dated February 10, 2005).*
2. Applicant's initial denial was to subparagraph 1.a, regarding the duration of her marijuana use. With the SOR so amended, the Government's allegation mirrored Applicant's concession of past usage.
3. Transcript of June 17, 2005 (Tr.), at 8. ("I cannot say that 25 (instances of marijuana usage) is an exact number.... But it was a random pattern... but during my time in college, I did use marijuana.")
4. Government Exhibit 2 (Applicant Statement to DSS, dated November 21, 2003), at 4.
5. Government Exhibit 3 (Applicant Statement to DSS, dated April 26, 2004), at 2.
6. Indeed, any residual chance encounters with former associates with whom she now only sees in a non-social capacity by happenstance or proximity should be eliminated with her upcoming out of state move to join her fiancée and return to university.
7. Both parties note that the region at issue is a noted corridor for "crystal meth" activity. Tr., *supra* note 3, at 24, 42-43.
8. *Id.*
9. *See, e.g., Id.*, at 39-41.
10. Tr., *supra* note 3, at 43.
11. ⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
12. ⁰ *Id.*, at 531.
13. Directive, Enclosure 2, Attachment 8, Guideline F, ¶ E2.A8.1.1.
14. Directive, Enclosure 2, Attachment 5, Guideline F, ¶ E2.A5.1.1.
15. Tr., *supra* note 3, at 43.

