

KEYWORD: Drugs

DIGEST: Applicant used marijuana 25-30 times in social situations over a six-year period, but voluntarily stopped using marijuana in December 2002. He fully disclosed his marijuana use on his security clearance application (SF 86). He is not psychologically or physically addicted. He has changed his lifestyle and is determined to not abuse any controlled substances in the future. He has mitigated the security concern based on drug involvement. Clearance is granted.

CASENO: 04-02332.h1

DATE: 06/12/2006

DATE: June 12, 2006

---

In re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 04-02332

**DECISION OF ADMINISTRATIVE JUDGE**

**LEROY F. FOREMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Francisco Mendez, Esq., Department Counsel

## **FOR APPLICANT**

Edmund M. Davis, Esq.

### **SYNOPSIS**

Applicant used marijuana 25-30 times in social situations over a six-year period, but voluntarily stopped using marijuana in December 2002. He fully disclosed his marijuana use on his security clearance application (SF 86). He is not psychologically or physically addicted. He has changed his lifestyle and is determined to not abuse any controlled substances in the future. He has mitigated the security concern based on drug involvement. Clearance is granted.

### **STATEMENT OF THE CASE**

On March 14, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a security clearance. The SOR alleges security concerns under Guideline H (Drug Involvement).

Applicant answered the SOR in writing on May 12, 2005, admitted the allegations, offered explanations, and did not request a hearing. At some time after May 12, 2005, Applicant retained counsel. On August 9, 2005, he requested a hearing. <sup>(1)</sup> Applicant's counsel submitted an undated supplement to the answer to the SOR, again admitting the allegations and offering explanations and mitigating evidence. The case was assigned to an administrative judge on January 6, 2006, and reassigned to me on February 6, 2006, based on workload. On February 13, 2006, DOHA issued a notice of hearing setting the case for March 28, 2006. The case was heard as scheduled. DOHA received the transcript (Tr.) on April 7, 2006.

### **FINDINGS OF FACT**

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I make the following findings:

Applicant is a 41-year-old senior scientist for a defense contractor. He has worked for his current employer since May 1998. He has held a security clearance since April 1993.

Applicant spent 10 years as an undergraduate before obtaining a degree. He majored in mathematics with a minor in physics, but he took a number of unrelated courses in Russian, economics, history, and philosophy. While an undergraduate, he did independent research in comparative history and economic development, traveled overseas, ran a computer training center in Africa for two years, and lived in Africa for an additional year studying education finance reform. <sup>(2)</sup>

Applicant was married in April 1998 and was divorced in February 2005. No children were born during this marriage. He and his ex-wife decided not to have children, and they spent their leisure time going out with friends, partying, bar hopping, and attending music-related events.

Applicant's marijuana use was always event-related. He used it with friends at music festivals, concerts, New Year's Eve, birthdays, and similar events. He estimated he used it five or six times a year until he used it for the last time on New Year's Eve in 2002. <sup>(3)</sup> He felt no peer pressure to use marijuana but used it simply because it was pleasurable. That lifestyle became "less satisfying over time," causing Applicant to terminate his marriage, find new friends, and change his lifestyle. <sup>(4)</sup> He has no desire to resume his marijuana use. <sup>(5)</sup> He is now engaged and living with a woman who has three children (ages 8, 9, and 12) from a previous relationship. <sup>(6)</sup> Instead of spending his leisure time frequenting bars and attending music festivals, he spends it on soccer, Little League baseball, and family life. <sup>(7)</sup> Although he occasionally sees his old friends, they "don't hang out together anymore," because he doesn't have time for "that stuff" anymore. <sup>(8)</sup>

Applicant submitted a SF 86 on September 16, 2003, in order to obtain a higher level of clearance and take on more responsibilities with his company. <sup>(9)</sup> In his SF 86, he disclosed using marijuana 25-30 times between August 1996 and December 2002, while he held a security clearance. <sup>(10)</sup> After he completed his SF 86, his security officer realized he had never executed the company's "drug statement," acknowledging his awareness that unlawful use of drugs was a basis for denial or loss of a security clearance. The security officer had Applicant execute a "drug statement" shortly after he executed the SF 86. <sup>(11)</sup> The security officer had the impression it was the first time Applicant realized his marijuana use was irresponsible and would not be condoned in the future. <sup>(12)</sup> Notwithstanding Applicant's previous marijuana use, his security officer regards him as "a model employee with good moral character." <sup>(13)</sup>

Applicant used marijuana while holding a security clearance because he believed the risk of detection was low and he was not working on classified projects. <sup>(14)</sup> The execution of the SF 86 had a "forcing function," because he had to answer the question about drug use. <sup>(15)</sup> When asked if he would disclose his marijuana use if he "had it all to do over again," he responded that he would make the disclosure, because the alternative of living with the lie and the potential ramifications of the lie would be worse. <sup>(16)</sup>

Applicant received outstanding performance appraisals for 2003 and 2004, and he received substantial pay raises based on his performance and increased level of responsibility. <sup>(17)</sup> The president of his company regards him as an exemplary and highly respected employee, with a reputation for being honest, trustworthy, reliable, hard-working, and conscientious. <sup>(18)</sup> Two government officials who have worked with Applicant submitted affidavits stating they were aware of his previous marijuana use but regard him as honest, candid, conscientious, extremely intelligent, and "of incalculable value" to their projects. <sup>(19)</sup>

In March 2005, July 2005, January 2006, and March 2006, Applicant was randomly tested for use marijuana, cocaine, amphetamines, opiates, and phencyclidine, and he tested negative for all the substances on each occasion. <sup>(20)</sup> Because of his admission of previous marijuana use, he was tested more frequently than other employees. <sup>(21)</sup>

In July 2005, Applicant voluntarily underwent a polygraph examination in which he was questioned about his marijuana use. <sup>(22)</sup> In the same month, he was jointly evaluated by a forensic psychiatrist and a clinical psychologist. The evaluators concluded Applicant had "no problems in the following areas: alcohol or drug dependence or addiction vulnerability; unusual thoughts or peculiar experiences, antisocial behavior; problems with empathy; undue suspiciousness or hostility; moodiness or impulsivity; unhappiness and depression, unusually elevated mood or heightened activity; marked anxiety; problematic behavior used to manage anxiety, or difficulties with health or physical functioning." They concluded he was "a psychologically sound man with very good moral and ethical standards," with "no psychiatric diagnosis or substance abuse disorder." <sup>(23)</sup>

The psychiatrist testified Applicant's marijuana use was "social usage, not a dependence problem." Accordingly, he and the psychologist concluded no formal rehabilitative treatment was necessary. <sup>(24)</sup> The psychiatrist believes marijuana use is now "anachronistic in his life," because Applicant has moved away from his college lifestyle, assumed more professional responsibility, married a woman with three children, and is committed to being a father figure for his family. <sup>(25)</sup>

## **POLICIES**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, 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." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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).

The Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1. through 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (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 applicant'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 ¶¶ E2.2.1.1. through E2.2.1.9.

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in persons with access to classified information. However, the decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3; *see* 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). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

## CONCLUSIONS

Under Guideline H, improper or illegal involvement with drugs raises questions regarding an applicant'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. Any illegal use of a controlled substance can raise a security concern and may be a disqualifying condition (DC 1). Directive ¶ E2.A8.2.1. Illegal drug possession also is a disqualifying condition (DC 2). Directive ¶ E2.A8.2.2. Applicant's admitted possession and use of marijuana establish DC 1 and DC 2.

Security concerns based on possession and use of marijuana can be mitigated (MC 1) by showing it was not recent. Directive ¶ E2.A8.1.3.1. There are no "bright line" rules for determining when conduct is "recent." The determination must be based "on a careful evaluation of the totality of the record within the parameters set by the directive." ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). If the evidence shows "a significant period of time has passed without any evidence of misconduct," then an administrative judge must determine whether that period of time demonstrates "changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation." *Id.* As of the date of the hearing, Applicant had not used marijuana for 39 months. His awakening occurred when he was faced with honestly executing his SF 86 and confronted by his security officer about the implications of illegal marijuana use. He ended a sterile marriage, and is involved in a new family-oriented relationship. He changed his lifestyle, substituting soccer, Little League, and family life for bar hopping and smoking marijuana at music festivals. He no longer associates on a regular basis with his marijuana-using friends. After drifting through 10 years of college life and young adulthood, he realized he needed to grow up and change his lifestyle. He has moved to more responsible positions in his company and finally realizes the importance of maintaining the trust of his employer, clients, and the U.S. government. I conclude MC 1 is established.

Security concerns under this guideline also can be mitigated (MC 2) by evidence of a "demonstrated intent not to abuse any drugs in the future." Directive ¶ E2.A8.1.3.3. "Only with the passage of time will there be a track record that shows whether a person, through actions and conduct, is willing and able to adhere to a stated intention to refrain from acting in a way that the person has acted in the past." ISCR Case No. 97-0727, 1998 DOHA LEXIS 302 at \*7 (App. Bd. Aug. 3, 1998). Applicant has stated his intent not to abuse drugs. He has demonstrated his intent by changing his lifestyle, changing his circle of friends, and not using marijuana for more than 39 months. At the hearing, he impressed me as open, honest, and sincere. I conclude MC 2 is established.

Finally, security concerns under this guideline can be mitigated (MC 4) by evidence of "[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." Directive ¶ E2.A8.1.3.4. Applicant did not undergo

formal rehabilitation and aftercare, because the psychiatrist and psychologist who evaluated him determined none was needed. He has not had a recurrence of abuse for more than 39 months, and he received a favorable prognosis from the two credentialed medical professionals who evaluated him. Because Applicant has not completed any formal rehabilitation program, I conclude MC 4 is only partially established.

Under the general adjudicative guidelines, I have considered that Applicant's marijuana use while holding a security clearance was a criminal offense and a serious breach of trust. Directive ¶ E2.2.1.1. His marijuana use was relatively frequent for about six years, but is not recent. Directive ¶ E2.2.1.3. His marijuana use occurred when he was in his 30's, but at that time his level of judgment and maturity was well below his chronological age. Directive ¶ E2.2.1.4. He has accepted responsibility for his conduct, changed his lifestyle, and refrained from future drug abuse. Directive ¶¶ E2.2.1.6. Because of his decision to fully disclose his past marijuana use, he has eliminated the potential for pressure, coercion, exploitation, or duress. Directive ¶ E2.2.1.8. In light of all the changes in his lifestyle and his demonstration of belated maturity, I believe the likelihood of recurrence is low. Directive ¶ E2.2.1.9.

After considering the disqualifying and mitigating conditions and evaluating the evidence in the context of the whole person, I conclude Applicant has mitigated the security concern based on drug involvement.

### **FORMAL FINDINGS**

The following are my findings as to each allegation in the SOR:

Paragraph 1. Guideline H (Drug Involvement): FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For 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 Applicant a security clearance. Clearance is granted.

LeRoy F. Foreman

Administrative Judge

1. Hearing Exhibit I.
2. Tr. 141-44.
3. Tr. 168.
4. Tr. 153.
5. GX 2.
6. Government Exhibit (GX) 1 at 3; Tr. 145, 177-78.
7. Tr. 152-53.
8. Tr. 178-79.
9. Tr. 33.
10. GX 1 at 7.
11. Applicant's Exhibit (AX) I; Tr. 89.
12. Tr. 89.
13. AX H.
14. Tr. 150.
15. Tr. 150-51.
16. Tr. 159.
17. AX C, D, E.
18. AX B.
19. AX F, G.



20. AX J, K, L, M; Tr. 97.

21. Tr. 97-98.

22. Exhibit 1 to Applicant's Supplement to his Answer to the SOR.

23. AX O at 6, 8-9.

24. Tr. 109.

25. Tr. 120.