

DATE: November 9, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-03254

ECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esq., Department Counsel

FOR APPLICANT

Philip Cave, Esq.

SYNOPSIS

Applicant is a 29-year-old college graduate with a master's degree in business. She has abused marijuana, cocaine and ecstasy with varying frequency, starting in 1993 and ending in June 2003. Applicant readily admits to succumbing to peer pressure when she used drugs. She has failed to meet the ultimate burden of persuasion. Clearance is denied.

STATEMENT OF THE CASE

On May 24, 2004, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance. ⁽¹⁾ The SOR which is in essence the administrative complaint, alleges a security concern under Guideline H for drug involvement.

In a sworn answer, dated July 26, 2004, Applicant responded to the SOR allegations, and requested a hearing. In her response to the SOR, Applicant admitted all allegations, while providing explanations in an effort to extenuate or mitigate the security concern raised by the allegations.

The case was assigned to me on September 23, 2004. A notice of hearing was issued on October 4, 2004, scheduling the hearing for October 19, 2004. ⁽²⁾ The hearing was conducted as scheduled. The government submitted four documentary exhibits that were marked as Government Exhibits (GE) 1-4. GE 1-3 were admitted into the record. GE 4 was objected to and was not admitted nor was it considered. Applicant testified, called one witness to testify on her behalf, and submitted nine documentary exhibits that were marked as Applicant's Exhibits (AE) A-I. All of Applicant's exhibits were admitted into the record without an objection. The transcript was received October 27, 2004.

FINDINGS OF FACT

Applicant's admissions to the allegations contained in the SOR are incorporated herein. In addition, after a thorough

review of the pleadings and exhibits, I make the following findings of fact:

Applicant is a 29-year-old single woman who is employed by a defense contractor as a senior consultant. She graduated from college in 1997 with high grades, and was awarded a prestigious international grant that afforded her an opportunity to study in a foreign country for almost a year. After fulfilling her scholarship commitments she worked as an associate editor for a corporation, and was a bartender from approximately 1998 to 2001. Applicant was unemployed from August 2001 through February 2002, and August 2002 through August 2003. Applicant began graduate school in 2001, and was awarded a master's in business in 2003. While attending college and graduate school Applicant held various jobs, including, marketing manager for a start-up corporation, waitress and bartender. After completing graduate school, Applicant relocated to a new city and in the summer of 2003 commenced her current employment.

Applicant used marijuana from 1993 through June 2003 approximately 50 times. Applicant used cocaine once in January 1998 and once in March 2003. During the period of October 1998 to June 2003, Applicant used ecstasy four times. On occasion, Applicant contributed money to buy marijuana and ecstasy for personal use.

Applicant started using drugs when she went to college and used marijuana throughout college. She would donate money, along with others to purchase marijuana. She decided to try marijuana because it was available and mainstream. She did not feel much effect the first time, but tried it again because she was in a social setting. It made her feel high, but she did not like it. She used it more than once a month while attending college, but not once a week. While attending business school, over a two-year period, Applicant used marijuana approximately ten times. She did not have any bad experiences.

Applicant used cocaine twice. She was 23 years old the first time and 27 years old the second time. She never purchased cocaine. She considered cocaine more dangerous than marijuana. The first time she tried cocaine was New Year's Eve. At the time she was participating in a grant program abroad. She was with foreign friends, they were older and she succumbed to their peer pressure. Applicant was afraid of the effect the cocaine might have on her, so she only used a small amount. She used cocaine because these were the only friends she had in the foreign country and she wanted to fit in.

While in business school, at the age of 27, Applicant again used cocaine. She had moved to a new state to attend business school, she did not know very many people and she had made new friends. When asked if she wanted to use cocaine, she again succumbed to the peer pressure of her friends and agreed to use it. She was afraid of the effect cocaine might have on her, but she used it anyway. The illegality and riskiness of using cocaine made her uncomfortable, but because the crowd was doing it, she did too. Applicant used drugs in an academic setting because they were "available and mainstream."

The third drug Applicant used was ecstasy. She used it four times and donated money to purchase the drug. She was aware of the information about ecstasy and its dangerous side effects. She considered it more dangerous than marijuana. She used ecstasy because she was curious and to experiment. She used it with people she worked with from a bar. They would use it at someone's house and then go to a night club. She used a small amount of ecstasy each time. The only effect she can remember was the ecstasy made sleeping difficult. It was not a fun experience nor a horrible experience.

Applicant was aware of the illegality of her drug use and claims to have had lapses in judgment. Applicant claims she will not use drugs in the future and they are part of her past. She admits her acts were immature.

Applicant's supervisor testified she had received good performance evaluations and was an outstanding and reliable employee. She has a good reputation for honesty and integrity. He also testified she conforms with the company's core values of professionalism, respect, integrity and honesty. Character statements from those who know Applicant attested that Applicant was trustworthy, loyal and dependable and none had ever witnessed her use drugs or abuse alcohol or heard of her doing any of these things.

Applicant provided a drug evaluation that proffered she was not drug dependent. No information was provided as to the type and length of evaluation nor the specific qualifications of the counselor. She also provided confirmation of a negative drug urinalysis, admittedly not random. Applicant has a good credit history. Applicant stopped using drugs in June 2003. Applicant admits she often times was drinking alcohol when she used drugs. Applicant is a moderate drinker

and physical fitness is important to her. Applicant submitted her Personnel Security Questionnaire (SF 86) in July 2003. Applicant's current and future intentions are to never use illegal drugs again.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are Disqualifying Conditions (DC) and Mitigating Conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. 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 drugs, and its respective DC and MC, is most relevant in this case.

BURDEN OF PROOF

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽³⁾ The government has the burden of proving controverted facts.⁽⁴⁾ The burden of proof is something less than a preponderance of evidence,⁽⁵⁾ although the government is required to present substantial evidence to meet its burden of proof.⁽⁶⁾ Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.⁽⁷⁾ 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 her.⁽⁸⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

No one has a right to a security clearance⁽¹⁰⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹¹⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹²⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹³⁾ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Under Guideline H, illegal drug involvement may raise a security concern based on the improper and illegal involvement with drugs. Improper or illegal involvement with drugs is relevant to the security clearance process for several reasons: (1) drug abuse indicates an unwillingness or inability to abide by the law; (2) drug abuse weakens judgment; (3) some types of drug use reflect a tendency toward irresponsible or high risk behavior; (4) users of illegal drugs may be susceptible to blackmail, especially if exposure of drug use could cost them their job; (5) drug abuse or dependence often indicates the presence of broad emotional or personality problems that are security concerns; and (6) drug use may cause financial problems, leading to criminal activity to finance a drug habit.

Based on all the evidence, under Guideline H, I find disqualifying condition (DC) 1: *Any drug abuse*; and DC 2: *Illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution* apply in this case. I have considered all the mitigating conditions under Guideline H, and specifically considered mitigating condition MC 1: *The drug involvement was not recent*; MC 2: *The drug involvement was an isolated or aberrational event*; and MC 3: *A demonstrated intent not to abuse any drugs in the future*, and conclude none apply.

Applicant is a well-educated, intelligent college graduate with a master's degree in business. She has been employed in

various jobs while attending school and in-between college and graduate school. During her college years she used marijuana about 50 times. She continued to use marijuana while in graduate school. While participating in a scholarship program abroad she used cocaine and also used it once during graduate school. Applicant used the drug ecstasy four times. Applicant donated money, on occasion, to purchase marijuana and ecstasy.

Applicant's drug use started in 1993 and did not conclude until June 2003. Addressing MC: 1, Applicant candidly admits her prior drug abuse was as recent as a month before she started her current job. Based on her long past history of drug abuse and the relatively short period of time that has elapsed since she last used drugs, I find MC: 1 does not apply.

Applicant used drugs with varying frequency over a ten-year period of time. Although she claims not to really like the drugs' effects, she would still use them when she was in social settings. She readily admits to frequently succumbing to peer pressure to use drugs. She used drugs while attending college, while working at a bar, while in a foreign country and while attending graduate school. Based on the frequency of Applicant's use and her willingness to acquiesce to using drugs on numerous occasions in social settings and due to peer pressure, I find her drug abuse was not isolated or an aberrational event, and MC 2 does not apply.

Applicant stated numerous times that she used bad judgment when she used drugs and it was immature of her to do so. She also stated she used drugs to "fit in" at social settings and because she was curious and experimenting. Applicant stated she does not intend to use drugs in the future. Applicant's drug abuse over a ten-year period goes beyond a period of youthful indiscretion. She has consistently succumbed to peer pressure even at 27 years old. Despite claiming she did not like the effects the drugs induced, she still used them. Despite being aware of the risk she was taking, both physically and criminally, she still used the drugs. She used the drugs because they were "available and mainstream." She did this even though she claims she does not like the way the drugs make her feel. Her need to "fit in" and willingness to go along with her peers, even when she doesn't like the activity, is troublesome. Applicant's history of following the crowd even when it means doing something she either does not like or something she does not want to do raises serious doubts as to her ability to remain steadfast in protecting our national interests. Applicant is in new job and in a new city, a very similar situation to when she used drugs in her past. Based on her previous conduct and her need to fit in, a sufficient amount of time has not lapsed to ensure a demonstrated change in Applicant's behavior pattern. I have considered all the evidence regarding Applicant's character. I have also considered the negative results of her scheduled drug test, and the drug evaluation and conclude MC 3 does not apply.

Considering all the relevant and material facts and circumstances presented, the whole person concept, the applicable disqualifying and mitigating conditions, and other appropriate factors and guidelines in the Directive, the SOR allegations are decided against Applicant. I find Applicant has failed to overcome the case against her and satisfy her ultimate burden of persuasion. It is not clearly consistent with the national interest to grant Applicant a security clearance.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline H AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. 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. Clearance is denied.

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Although written notice was not issued until October 4, 2004, Applicant was contacted by Department Counsel on or around September 24, 2004, and agreed to the scheduled date.
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Section E3.1.14.
5. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
6. ISCR Case No. 01-20700 (December 19, 2002) at p.3 (citations omitted).
7. ISCR Case No. 98-0761 (December 27, 1999) at p.2.
8. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, Section E3.1.15.
9. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Section E3.1.15
10. *Egan*, 484 U.S. at 528, 531.
11. *Id.* at 531.
12. *Egan*, Executive Order 10865, and the Directive.
13. Executive Order. 10865.§ 7.