

KEYWORD: Drugs; Personal Conduct

DIGEST: Security concerns persist over Applicant's personal conduct in falsifying his security clearance application with respect his failure to disclose the full extent of his college drug use as he feared that the required honesty would hurt his chances to receive a security clearance. On the other hand he has mitigated concerns over his college drug use as he stopped using drugs in 2003, no longer associates with individuals who use drugs, and has adopted a commitment to a healthy life style. Clearance is denied.

CASENO: 04-03738.h1

DATE: 02/22/2006

DATE: February 22, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-03738

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Security concerns persist over Applicant's personal conduct in falsifying his security clearance application with respect his failure to disclose the full extent of his college drug use as he feared that the required honesty would hurt his chances to receive a security clearance. On the other hand he has mitigated concerns over his college drug use as he stopped using drugs in 2003, no longer associates with individuals who use drugs, and has adopted a commitment to a healthy life style. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on March 31, 2005. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. ⁽¹⁾ The SOR alleges specific concerns over drug abuse (Guideline H) and personal conduct (Guideline E). Applicant responded to these SOR allegations in an Answer notarized on April 19, 2005, where he admitted all allegations and requested a hearing.

Department Counsel signed a Ready to Proceed notice on July 19, 2005, and the matter was assigned to me on July 19, 2005. An August 11, 2005, Notice of Hearing set the matter for September 7, 2005. Department Counsel offered two

documents that were admitted into evidence. (Exhibits 1& 2) Applicant testified and asked that the record be kept open for seven days so that he could submit additional evidence by September 14, 2005; Department had two days to review them and submit them by September 16, 2005. (TR 19-20) He subsequently timely submitted his evidence on September 13, 2005. Exhibit A was admitted into evidence without objection. The transcript (TR) was received on September 16, 2005.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, 24 years old, has worked for Employer #1 in State #1 from July 2003 to present. He completed a security clearance application (SF-86) in October 2003. (Exhibit 1; TR 18-19)

Applicant graduated from college in State #2 with a B.S. degree in December 2002 but stayed in school for one extra semester and left in May 2003. He is single. (Exhibit 1; TR 20-21)

Drugs and Personal Conduct

On his 2003 security clearance application Applicant certified that his statements were "true, complete, and correct" and that a knowing and willful false statement can be punished by a fine or imprisonment or both. (See section 1001 of title 18, United States Code). Nevertheless, Applicant admits he minimized his drug use in response to Question 27 on drug use: he disclosed only his use of marijuana two times in May 2003. (Exhibit 1; TR 15) While he initially submitted his SF 86 in July 2003 he was given an opportunity to review the form again when he was asked to sign the form in October 2003. However, he did not review and change any of his answers except to correct his address; he merely re-signed the form. (TR 26-28) (SOR 2.a.) In his Defense Security Service (DSS) interview in December 2003, Applicant clarified and admitted that he smoked marijuana several more times than disclosed in his college years before he applied to work at a defense contractor:

These times **stated in my security form** include a time in 2002 at a party where I tried to inhale two to three puffs of marijuana through a pipe (it had no effect on me), in May 2003 two times through ingestion by an unrecalled number of brownies. . . and twice in the summer of 2003 with an unrecalled number of puffs (but less than 10) from a pipe.

(Emphasis added.)

(Exhibit 2) He admits he also told the DSS agent that he supported the legalization of marijuana. While he admitted it was immature to make the statement, he does support legalization of marijuana. (TR 36-41) (SOR 2.b.)

However, contrary to what he said in his DSS statement, he did not state all of these times of marijuana use in his security form. When he testified, he stated initially he did not recall the "exact times" of his marijuana use as he used marijuana going from one party to another party. (TR 14-15, 21-23, 32-35) (SOR 2.a.) However, he explained in his Answer that he did not list all of use uses of marijuana on his SF 86 because "of concern it would hurt my chances of getting a security clearance." This admission supports a conclusion that he knew his answers on his drug use were material and that he deliberately minimized them in the SF 86. (Answer; TR 24-26, 29-20)

Applicant used marijuana fewer than ten times in college. (TR 32) (SOR 1.a.) Subsequently, Applicant has stopped using marijuana since he left college; his last use was May 2003. He no longer associates with the people with whom he used drugs in college and has no intent to use drugs in the future. Since July 2004 he has been committed to a healthy life-style. (TR 17-18, 22, 29-31, 42-44) His evaluations reflect that he meets expectations and in some areas such as dependability and quality of work exceeds expectations. (Exhibit A)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole, I weighed relevant Adjudication Guidelines as set forth below:

Guideline H - Drug Involvement

E.2.A.8.1.1. *The Concern:* 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.

Guideline E - Personal Conduct

E2.A5.1.1. 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.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. The Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Guideline H - Drug Involvement

The Government established security concerns over Applicant's drug use in college as involvement with illegal drugs raises questions regarding an individual's willingness or ability to protect classified information. He used marijuana from fall 2002 to May 2003 and believe drug use should be legalized. Drug abuse or dependence may impair social or occupational functioning and increase the risk of an unauthorized disclosure of classified information. His actions fall within conditions that could raise a security concern and may be disqualifying including: E2.A8.1.1.2.1. (any drug abuse).

However, Applicant has mitigated⁽²⁾ security concerns over his college use of marijuana as there is no evidence that he returned to use drugs since May 2003; he no longer associates with anyone who uses drugs and has made a commitment to a healthy life-style. Thus, E2.A8.1.1.3.1. (The drug involvement was not recent.) applies. In sum, under E2.A8.1.1.3.3., he has shown a demonstrated intent not to abuse any drugs in the future. Further, he provided evaluations showing that he has matured and is well-regarded at his place of employment.

Hence, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant under subparagraph 1.a. incorporated under SOR Paragraph 1.

Personal Conduct

The Government established security concerns over Applicant's Personal Conduct over his false statement on his SF 86 with respect to the number of time he used drugs in college which falls within E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities and within Disqualifying Condition (DC) (5): E2.A5.1.2.5. A pattern of dishonesty or rule violations.

None of Applicant's explanations meet the mitigation⁽³⁾ guidelines. When he had the opportunity to review the SF 86 when he was asked to re-sign it, he corrected his address but chose not to correct and reveal the full extent of his college marijuana use. Thus, he does not meet the standard of making a prompt, good-faith effort to correct the falsification before being confronted with the facts. His disclosures to the DSS agent with respect to the number of times he used drugs, documented in the DSS sworn statement, do not extenuate his responsibility to be more honest in his SF 86. Also, looking at Applicant as a whole person⁽⁴⁾ and considering the circumstances surrounding his conduct (E2.2.1.2), I conclude Applicant showed poor judgment also in his comments about the legalization of drugs. While he has favorable evaluations from his employer, he failed to provide sufficient evidence of a current record of behavioral changes with respect to personal conduct. Overall, I conclude that he has failed to provide sufficient evidence of reform over these personal conduct issues.

Thus, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant under SOR Paragraph 2 under subparagraph 2.a. and 2.b.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline H: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against 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 the Applicant. Clearance is denied.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. **E2.A8.1.1.3. Conditions that could mitigate security concerns include:** E2.A8.1.1.3.1. The drug involvement was not recent; E2.A8.1.1.3.2. The drug involvement was an isolated or aberrational event; E2.A8.1.1.3.3. A demonstrated intent not to abuse any drugs in the future; E2.A8.1.1.3.4. Satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable diagnosis by a credentialed medical professional.
3. **E2.A5.1.3. Conditions that could mitigate security concerns include:** E2.A5.1.3.1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability; E2.A5.1.3.2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily; E2.A5.1.3.3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts; E2.A5.1.3.4. Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully

provided; E2.A5.1.3.5. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress; E2.A5.1.3.6. A refusal to cooperate was based on advice from legal counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information; E2.A5.1.3.7. Association with persons involved in criminal activities has ceased.

4. In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors: E.2.21.1. The nature, extent, and seriousness of the conduct; E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation; E2.2.1.3. The frequency and recency of the conduct; E2.2.1.4. The individual's age and maturity at the time of the conduct; E2.2.1.5. The voluntariness of the participation; E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes; E.2.2.1.7. The motivation for the conduct; E.2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and E.2.2.1.9. The likelihood of continuation or recurrence.
(E.2.2. Adjudication Process)