

KEYWORD: Drugs

DIGEST: Applicant was a substance abuser who began using marijuana while attending college in 1998. She regularly used marijuana at least 400 times from September 1998 to September 2002 and has purchased small quantities of marijuana. In May 1999, she used psilocybin mushrooms at least once. In August 2001, Applicant stated she had last used marijuana the night before and intended to continue using marijuana indefinitely. She stopped using illegal substances in September 2002 when she realized her marijuana use might preclude her from getting a security clearance. Her two-year abstinence from drug use is insufficient to overcome the government's case under Guideline H. Clearance is denied.

CASENO: 04-03779.h1

DATE: 03/14/2005

DATE: March 14, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-03779

DECISION OF ADMINISTRATIVE JUDGE

JACQUELINE T. WILLIAMS

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was a substance abuser who began using marijuana while attending college in 1998. She regularly used marijuana at least 400 times from September 1998 to September 2002 and has purchased small quantities of marijuana. In May 1999, she used psilocybin mushrooms at least once. In August 2001, Applicant stated she had last used marijuana the night before and intended to continue using marijuana indefinitely. She stopped using illegal substances in September 2002 when she realized her marijuana use might preclude her from getting a security clearance. Her two-year abstinence from drug use is insufficient to overcome the government's case under Guideline H. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On September 13, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision: security concerns under Guideline H (Drug Involvement). [\(1\)](#) Applicant answered the SOR on September 30, 2004. [\(2\)](#)

Department Counsel submitted the government's written case on November 30, 2004. Department Counsel provided a complete copy of the file of relevant material (FORM) to Applicant, along with notice of her opportunity to file objections and submit material to refute, extenuate, or mitigate the allegations. Applicant received the FORM on December 7, 2004. She did not respond to the FORM. The case was assigned to me on January 31, 2005.

FINDINGS OF FACT

Applicant admitted the factual allegations contained in the SOR except the allegation in ¶ 1.e. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is a 28-year-old employee of a defense contractor and is seeking a security clearance.⁽³⁾ She works as a financial analyst and has been with her current employer since February 2001.⁽⁴⁾ She submitted no evidence on the quality of her work performance.

Applicant began using marijuana in about September 1998 while in college.⁽⁵⁾ She began using marijuana because her boyfriend offered it to her and out of curiosity she tried it.⁽⁶⁾ She purchased small quantities of marijuana for her own use on numerous occasions.⁽⁷⁾ In May 1999 she

used psilocybin mushrooms at least once.⁽⁸⁾ She has not sold, cultivated, bartered, or transported marijuana.⁽⁹⁾

On August 20, 2001, Applicant executed a signed, sworn statement to an authorized investigator of the Department of Defense admitting that she intended to continue using marijuana indefinitely.⁽¹⁰⁾ She had used marijuana the day before she made her statement.⁽¹¹⁾

Between September 1998 and September 2002, Applicant regularly used marijuana at least 400 times.⁽¹²⁾ She used marijuana after April 2001 when she submitted her security clearance application and after August 2001 when she was questioned about her drug involvement by a Department of Defense investigator.⁽¹³⁾

On September 5, 2002, Applicant was counseled at work about her recreational drug use.⁽¹⁴⁾ She decided to stop using any illegal drugs after the counseling session and she has abstained from drug use for at least two years.⁽¹⁵⁾

POLICIES

Enclosure two of the Directive sets forth Adjudicative Guidelines that must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the Adjudicative Guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

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

Guideline H - Drug Involvement: 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. [\(16\)](#)

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

An administrative judge need not view the Adjudicative Guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in Section E2.2, Adjudicative Process, of the Directive, are intended to assist the administrative judge in reaching fair and impartial decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person" concept, all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The adjudicative process factors which and administrative judge should consider are: (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 for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. [\(17\)](#)

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation, or mitigation sufficient to overcome the doubts raised by the government's case and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated on trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. Because of this special relationship, the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions are predictive in nature and must often address potential, rather than actual, risk of compromise of classified information.

Finally, 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." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

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

The government has established its case under Guideline H. An applicant's improper and illegal drug abuse, including the purchase, possession, and uses of marijuana and psilocybin mushrooms, is of concern, especially in light of her desire to have access to the nation's secrets. The Directive clearly expresses the government's concern regarding drug involvement in ¶ 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*). Paragraph E2.A8.1.1.2.1 identifies and defines drugs (*drugs, materials, and other chemical compounds . . . (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens)*). Applicant's overall conduct pertaining to her illegal substance abuse falls within Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1 (and drug abuse) and DI DC E2.A8.1.2.2 (illegal drug possession, including . . . purchase, sale, or distribution). Applicant purchased and used marijuana with varying frequency from approximately September 1998 to September 2002. She also used psilocybin mushrooms at least once. Applicant's illegal use and possession of both marijuana and mushrooms reflect adversely on her judgment, reliability, and trustworthiness and suggests that she cannot be relied upon to safeguard classified information.

Applicant last used marijuana in September 2002. She has made a concerted effort to remain drug free and she no longer associates with individuals using illegal substances. ⁽¹⁸⁾ Applicant has abstained from use of marijuana for at least two years or more. I conclude this mitigating condition does not apply since her use is considered recent use. ⁽¹⁹⁾ Applicant initially experimented with marijuana and psilocybin mushrooms out of curiosity at college in about 1998. Upon graduation from college, Applicant was now a young adult and she regularly continued to use drugs, notwithstanding the illegal nature of her endeavor. She exhibited a pattern of questionable judgment, irresponsibility, and immature behavior, and continued her substance abuse of marijuana. Applicant used marijuana at least 400 times from 1998 to 2002. ⁽²⁰⁾ Moreover, Applicant's signed, sworn statement for a security clearance, dated August 20, 2001, indicated that "[m]y most recent use was Sunday August 19th 2001 (yesterday)." ⁽²¹⁾ Applicant further states "[m]y intentions are to continue my use of marijuana as I have described in my history." Applicant needs to be applauded for being honest and forthright with regard to her drug use. However, her marijuana use is too extensive and occurred over a lengthy period of time, at least four years. Based on the facts and circumstances here, her claim to remain drug-free is not credible. Applicant's two-year abstinence of drug use is too short a period of time to show she really intends to be drug-free. She should want to be drug-free because it is illegal to use and purchase marijuana and mushrooms and not because she wants to get a security clearance. I conclude this mitigating condition does not apply.

On September 5, 2002, Applicant was counseled about her drug use and how using marijuana could adversely affect her government's confidence in her as well as her employment. ⁽²²⁾ At that moment, she decided to stop using any illegal drugs. ⁽²³⁾ There is no evidence in the record to rebut her contention she has abstained since September 2002. I conclude that this mitigating condition applies since she demonstrated an intent not to abuse drugs in the future. ⁽²⁴⁾ But, Applicant needs to be drug-free for a longer period of time to show the seriousness of her intent, which is not just for the sake of her job but because of the illegality of drug use and possession.

The sufficiency or insufficiency of an applicant's period of conduct without recurrence of past misconduct does not turn on any bright-line rules concerning the length of time needed to demonstrate reform and rehabilitation, but rather a reasoned analysis of the facts and circumstances of an applicant's case based on a careful evaluation of the totality of the evidence record within the parameters set by the Directive. An administrative judge has discretion in deciding what period of time is sufficient to demonstrate reform and rehabilitation. Here, two years since Applicant's last use is insufficient to demonstrate reform or rehabilitation.

Under ¶ E2.A8.1.3.2 of the Directive, it may be mitigating where "[t]he drug involvement was an isolated or aberrational event." Applicant used psilocybin mushrooms, on at least one occasion in May 1999. I conclude this mitigating condition applies to the use of mushrooms because this was an isolated incident and not repeated but not to the use of marijuana.

I considered carefully all the potentially disqualifying conditions and mitigating conditions in light of the "whole person" concept. Applicant has failed to mitigate the security concerns arising from her use of marijuana.

FORMAL FINDINGS

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

Paragraph 1, Guideline H: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: For Applicant

DECISION

In light of all of 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.

Jacqueline T. Williams

Administrative Judge

1. Item 1 (Statement of Reasons (SOR), dated September 13, 2004).
2. Item 3 (Answer to SOR, dated September 30, 2004), at 1.
3. Item 4 (Security Clearance Application (SF 86), dated August 7, 2003).
4. *Id.*, at 2.
5. **Item 5 (Statement of Subject, dated August 20, 2001), at 1.**
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.*
12. Item 3, *supra*.
13. *Id.*
14. **Item 6 (Statement of Subject, dated January 12, 2004), at 2.**
15. *Id.*
16. **Directive, ¶ E2.A8.1.1.1.**
17. **Directive, ¶ E2.2.**
18. **Item 3, *supra*.**
19. **Directive, ¶ E2.A8.1.3.1.**
20. **Item 3, *supra*; Item 5, *supra*.**
21. *Id.*
22. **Item 4, *supra*, at 7.**
23. *Id.*
24. **Directive, ¶ E2.A8.1.3.3.**

