KEYWORD: Drugs; Criminal Conduct
DIGEST: Applicant is 25 years old with a history of occasional cocaine and marijuana abuse, spanning 1995 through 2003, in addition to a 2001 DUI misdemeanor conviction. Applicant failed to mitigate security concerns arising from drug involvement but did for criminal conduct. Clearance is denied.
CASENO: 04-04425.h1
DATE: 10/26/2005
DATE: October 26, 2005
In re:
SSN:
Applicant for Security Clearance
ISCR Case No. 04-04425
DECISION OF ADMINISTRATIVE JUDGE
SHARI DAM
<u>APPEARANCES</u>
FOR GOVERNMENT
Jeff A. Nagel, Esq., Department Counsel
FOR APPLICANT

Pro Se

#### **SYNOPSIS**

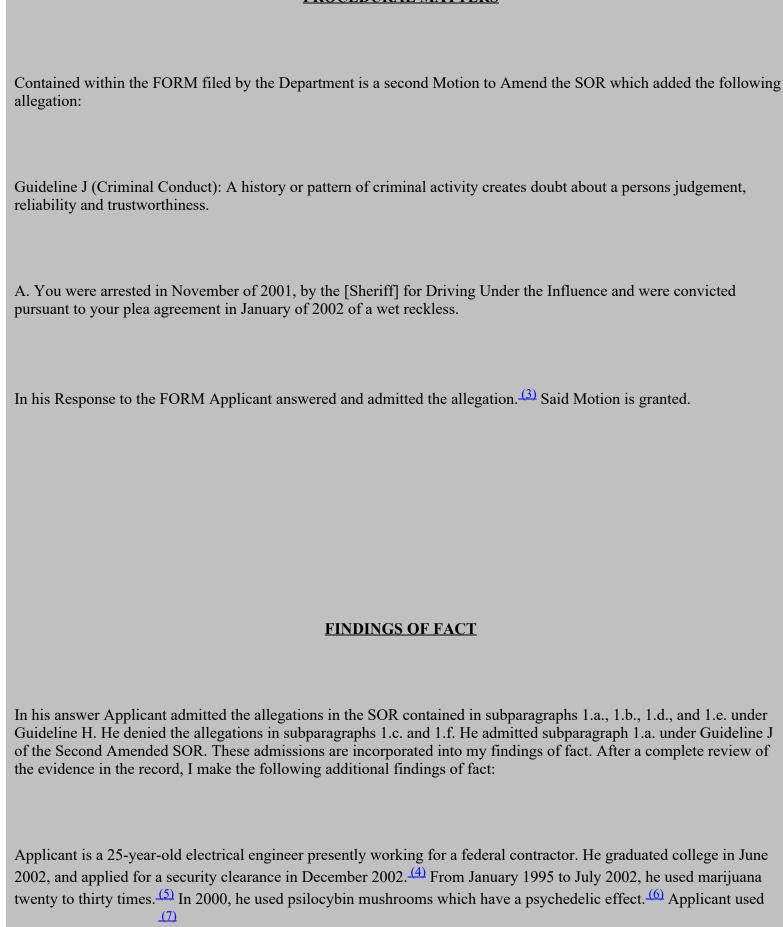
Applicant is 25 years old with a history of occasional cocaine and marijuana abuse, spanning 1995 through 2003, in addition to a 2001 DUI misdemeanor conviction. Applicant failed to mitigate security concerns arising from drug involvement but did for criminal conduct. Clearance is denied.

### STATEMENT OF THE CASE

On March 18, 2005, the Defense Office of Hearings and Appeals (DOHA) under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR, which is essentially an administrative complaint, detailed reasons under Guideline H (Drug Involvement) and Guideline E (Personal Conduct) why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to the Applicant. On April 6, 2005, DOHA filed an Amended SOR, withdrawing the allegations filed under Guideline E. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

On April 13, 2005, Applicant answered the SOR in writing and elected to have the case decided on the written record. (1) On June 30, 2005, Department Counsel prepared a File of Relevant Material (FORM) and provided Applicant with a complete copy. (2) Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on July 14, 2005, and submitted additional information on July 25, 2005. The Department Counsel did not object to those additional documents. This case was assigned to me on August 25, 2005.

### PROCEDURAL MATTERS





On November 1, 2001, Applicant was arrested for driving under the influence of alcohol. Pursuant to a plea agreement, Applicant was convicted of a misdemeanor on January 8, 2002. He was placed on probation for three years, fined \$775.00, and ordered to complete a 12-hour alcohol program. Applicant did not submit any evidence to document that he successfully completed the terms of the court imposed probation.

Applicant provided the results of a personally secured non-random urine screen, taken on July 20, 2005. The results were negative. (9)

Applicant's supervisor and colleague support of his request for a security clearance. (10)

In January 2004, Applicant said "It is possible I could use marijuana in the future, but if I did it would be an extremely rare occurance [sic], I think I've grown out of it. I would never pay for it and I haven't in years." [11] In April, 2005, he retracted the previous statement about possible future use and said he would not use marijuana in the future. [12] Applicant claims he is remorseful about his previous drug use. [13]

#### **POLICIES**

Enclosure 2 of the Directive sets forth adjudication guidelines which must be considered in the evaluation of security suitability. 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 the adjudicative process provision in Paragraph E2.2., Enclosure 2 of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. In addition, each security clearance decision must be 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, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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. 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.

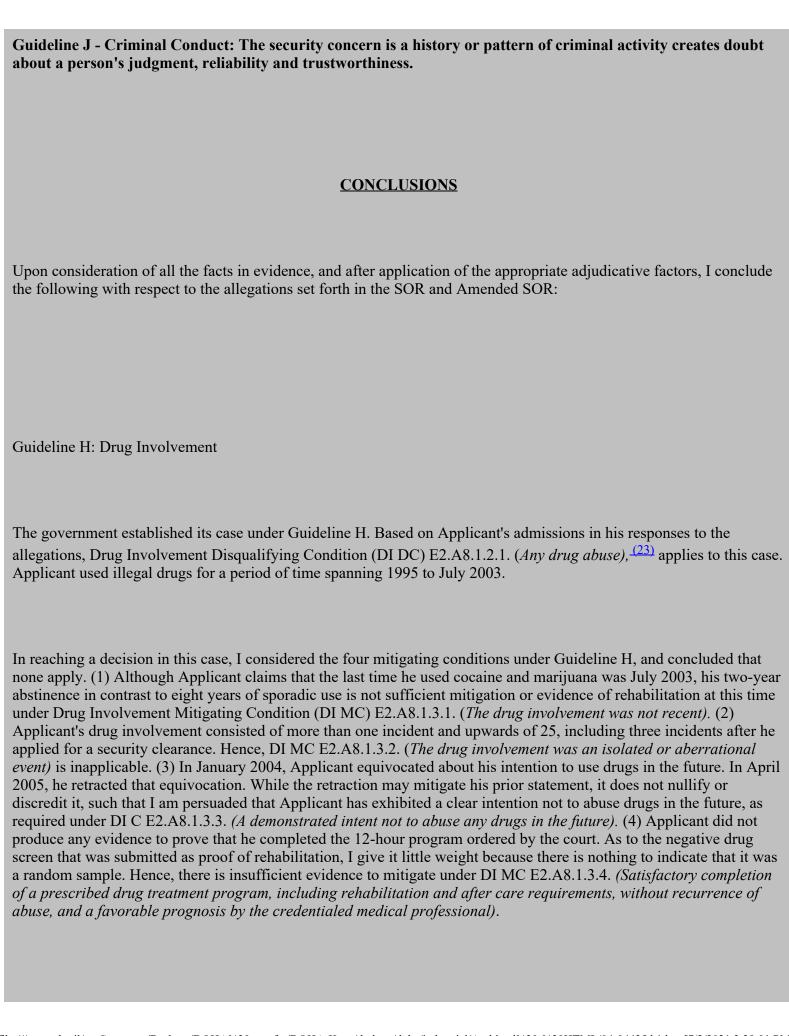
The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. The government has the burden of proving controverted facts. The burden of proof is something less than a preponderance of the evidence. Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.

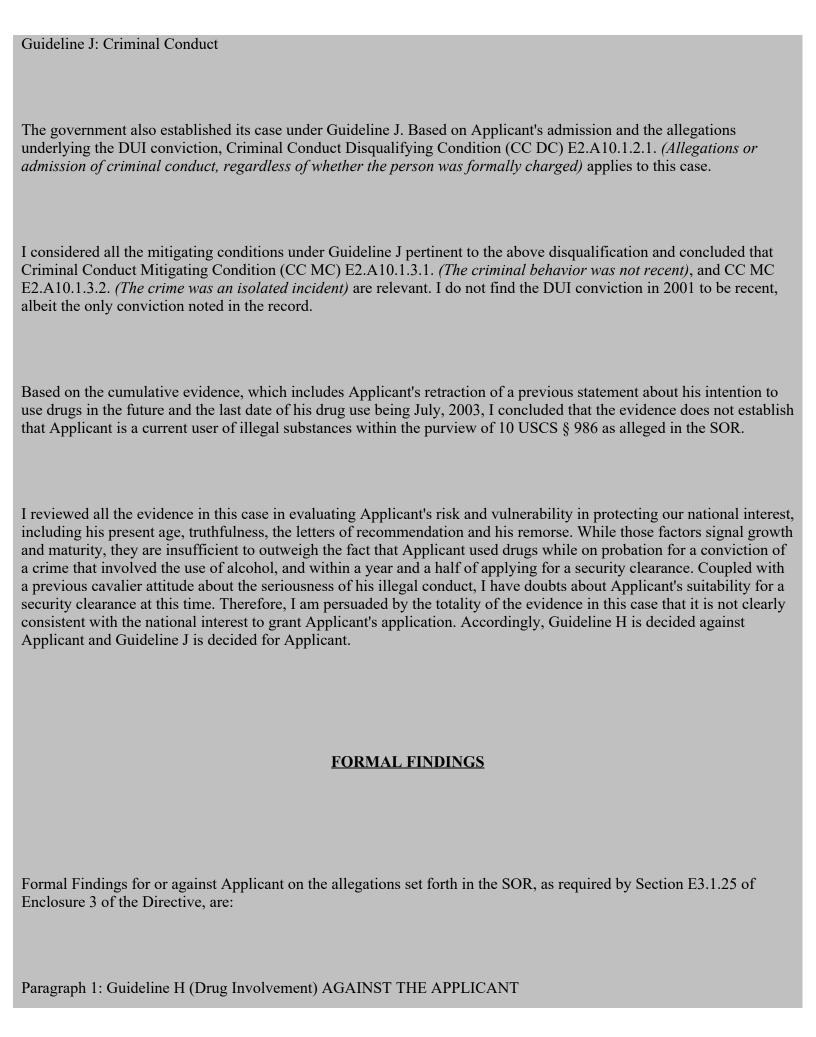
As noted by the Court in *Department of the Navy v. Egan*, 484 U.S. 518 (1988), "it should be obvious that no one has a right to a security clearance" (19) and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." (20) Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. (21) The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. (22) 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.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration relevant circumstances, and applying sound judgment, mature thinking and careful analysis.

Based upon the allegations contained in the SOR and Amended SOR and a consideration of the evidence as a whole, the following adjudicative guidelines are pertinent to an evaluation of the facts of this case:

Guideline H - Drug Involvement: The security concern is improper or illegal involvement with drugs, raise questions regarding an in 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.





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

Subparagraph 1.f.: For the Applicant

Paragraph 2: Guideline J (Criminal Conduct) FOR THE APPLICANT

Subparagraph 2.a.: For the 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 a security clearance for Applicant. Clearance is denied.

#### Shari Dam

# Administrative Judge

- 1. Item 5 (Answer to SOR, dated April 13, 2005).
- 2. The Government submitted eleven exhibits in support of its case.
- 3. Item 11 (Response to FORM, dated July 25, 2005) at 3.

- 4. Item 6 (Security Clearance Application, dated December 4, 2002) at 2-3.
- 5. Item 5, *supra* note 1, at 1.
- 6. Item 8 (Statement of Subject, dated January 2, 2004) at 2.
- 7. *Id.* at 1.
- 8. *Id*.
- 9. Government Exhibit 11, *supra* note 3, at 7.
- 10. Id. at 9 and 10.
- 11. *Id.* at 2.
- 12. Item 5, *supra* note 1, at 1.
- 13. Item 11, *supra* note 3, at 5.
- 14. ISCR Case No. 96-0277 at 2 (App. Bd., Jul. 11, 1997).
- 15. ISCR Case No. 97-0016 at 3 (App. Bd., Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
- 16. Department of the Navy v. Egan, 484 U.S. 518, 528 (1988).
- 17. ISCR Case No. 94-1075 at 3-4 (App. Bd., Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
- 18. ISCR Case No. 93-1390 at 7-8 (App. Bd., Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
- 19. Egan, 484 U.S. at 528.
- 20. *Id*.
- 21. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
- 22. Executive Order No. 10865 § 7.
- 23. E.2.A8.1.1.2.1. Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.