

KEYWORD: Drugs

DIGEST: Applicant used marijuana, cocaine, and methamphetamine. He was arrested in 1985 and ordered into a drug diversion program. In 1995, the police found him smoking marijuana and forced him to assist them in a drug bust. Applicant continued to use marijuana after stating in his security clearance application he would not do so. Applicant failed to mitigate security concerns raised by his drug involvement. Clearance is denied.

CASENO: 04-04615.h1

DATE: 01/03/2005

DATE: January 3, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-04615

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant used marijuana, cocaine, and methamphetamine. He was arrested in 1985 and ordered into a drug diversion program. In 1995, the police found him smoking marijuana and forced him to assist them in a drug bust. Applicant continued to use marijuana after stating in his security clearance application he would not do so. Applicant failed to mitigate security concerns raised by his drug involvement. 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. On 10 August 2004, DOHA issued a Statement of Reasons [\(1\)](#) (SOR) detailing the basis for its decision-security concerns raised under Guideline H (Drug Involvement) of the Directive. Applicant answered the SOR in writing on 16 August 2004 and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on 19 October 2004. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on 5 November 2004 and did not respond. The case was assigned to me on 29 December 2004.

FINDINGS OF FACT

Applicant is a 42-year-old chief technology officer for a defense contractor. Ex. 4 at 1. He is married and has two children.

Applicant began using marijuana in 1977 when he was 15 years old. He smoked it from 1977 until at least September 2003. Ex. 6 at 8. He purchased marijuana on more occasions than he can recall. Applicant snorted cocaine on about 10 occasions between 1981 and 1989. *Id.* Applicant used methamphetamine approximately three times from 1988-89. On occasion, he would smoke marijuana before he went to work. Sometimes he was under the influence of marijuana at work. *Id.* at 7.

Applicant was arrested in 1985 for constructive possession of cocaine. He was riding in a vehicle with an individual who had "a huge ball of cocaine." Ex. 6 at 3. Applicant appeared in court, but was allowed to enter a drug diversion program. The program consisted of eight, four-hour group counseling sessions and five years of informal probation. *Id.* at 3, 8. His wife urged him to stop using illegal drugs on several occasions, but he "could not muster up the will power to stop using marijuana." *Id.* In 1995, a police officer found Applicant in a vehicle a few blocks from his place of employment smoking marijuana. The police officer gave Applicant a choice of working with the police department on a future sting operation or getting a citation. Applicant was given money to buy marijuana from his source. He bought the marijuana and the source was later arrested. *Id.* at 4.

Applicant executed his security clearance application (SCA) on 13 March 2003. In the general remarks section, Applicant stated as follows: "I have used marijuana more times than I can count. I have recently confessed to my Wife, Pastor and friends that I have been doing this. I vow not to do this any longer. I am willing to and volunteering to subject myself to random drug testing." Ex. 4 at 7. Applicant used marijuana on a few occasions between March and September 2003. Ex. 6 at 4-5.

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 restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. 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 that 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 that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 (App. Bd. Dec. 19, 2002); *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.

CONCLUSIONS

In the SOR, DOHA alleged Applicant used marijuana from 1977-September 2003 (¶ 1.a), purchased marijuana (¶ 1.b), used cocaine from 1981-89 (¶ 1.c), was arrested for possession of cocaine, a felony (¶ 1.d), used methamphetamine from 1988-89 (¶ 1.e), agreed to participate in a police sting operation in 1995 in lieu of being charged with possession of marijuana (¶ 1.f), used marijuana from 1995-2002 while on work breaks (¶ 1.g), and continued to use marijuana after he executed his SCA on 13 March 2003 (¶ 1.h). The 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.

The Government's evidence and Applicant's admissions constitute substantial evidence of potentially disqualifying conditions under Guideline H. Applicant abused illegal drugs by using marijuana, cocaine, and methamphetamine. DC E2.A8.1.2.1. He also purchased illegal drugs. DC E2.A8.1.2.2. None of the listed mitigating conditions apply. Although Applicant claims he has turned his life around and does not intend to use illegal drugs in the future, he does not have an encouraging track record. He was arrested and ordered into a drug diversion program in 1985, forced to assist police in a drug bust in 1995, and yet continued to use drugs. He even used drugs after remarking on his SCA that he would not do so in the future. I find against Applicant.

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: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

James A. Young

Administrative Judge

1. Pursuant to Exec. Or. 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 (Directive).