

KEYWORD: Drugs

DIGEST: Applicant, a 24-year-old software engineer, mitigated allegations of drug use by passage of time since the last use, credible and demonstrated intent not to use drugs again, and a diagnosis of lack of drug dependency and abuse. Clearance is granted.

CASENO: 04-06239.h1

DATE: 07/18/2005

DATE: July 18, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06239

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Sabrina Redd, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 24-year-old software engineer, mitigated allegations of drug use by passage of time since the last use, credible and demonstrated intent not to use drugs again, and a diagnosis of lack of drug dependency and abuse. Clearance is granted.

STATEMENT OF CASE

On December 8, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On December 21, 2004, Applicant responded to the allegations, and requested a hearing. The matter was assigned to me on March 14, 2005. A notice of hearing was issued on April 1, 2005, and a hearing was held on May 4, 2005. Two government exhibits and four Applicant exhibits were admitted into evidence. The Applicant testified and called four witnesses who testified on his behalf. The transcript was received on May 13, 2005.

FINDINGS OF FACT

Applicant admitted all of the allegations relating to drug involvement but cited mitigating factors as to each of the allegations. After a complete review of the evidence in the record and upon due consideration of the record the following findings of fact are made:

Applicant is a 24-year-old software engineer employed by a major defense contractor who has an undergraduate degree and a master's degree he received in a five year program graduating at age 21. His academic record was outstanding with a 3.9 GPA undergraduate and 4.0 for his graduate program. Applicant used marijuana and other drugs during college. His use of marijuana was once every two weeks from 1998 until January 2003. He experimented with cocaine several times over an eight month period ending in November 2002. He used ritalin, adderall, and mushrooms a few times during brief periods in 2001. He purchased marijuana on one occasion when he was at home from his university.

He applied for a position with his employer in January , 2003, and admitted the drug use in the course of the application process. He was hired and has not used drugs since that time and does not intend to use them again. He regards the drug use as college experimentation and does not believe he was ever addicted or that they impaired his ability to function as a student. He filed an application for a security clearance (SF 86) in March, 2003, and admitted the same information he had given to his employer. He also repeated it in a security interview.

Applicant is highly regarded in his work by his supervisor (Exh. C). He has a stable group of friends and work colleagues who support him and testified on his behalf. He has a bright future according to his supervisor and two colleagues who testified for him. He shares an apartment with two housemates who testified for him regarding his good character, conduct, and drug abstinence He lives the life of a clean-cut college graduate and is surrounded by like-minded persons.

He maintains no contact with former classmates at his university with whom he used drugs and has started a new post-university lifestyle with a good job. He realizes his drug use and experimentation was a serious mistake and regrets the use of illegal drugs.

Applicant was evaluated by an addiction treatment services program in April, 2005, that determined he was not dependent on or an abuser of drugs. They recommended no treatment.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating it is clearly consistent with the national interest to grant or continue a security clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved

in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

The government has cited disqualifying condition (DC) 1 under Guideline H concerning drug involvement as relevant to the proposed denial of a security clearance for the Applicant. Drug involvement is always a security concern because it raises questions about a person's willingness or ability to protect classified information. Any drug abuse is a condition that may be disqualifying. The following definition is provided: "Drug abuse is the illegal use of a drug"

(E2.A8.1.1.3).

Possible mitigating conditions that might be applicable are that the drug involvement was not recent (E2.A8.1.3.1.), and there is a demonstrated intent not to abuse any drugs in the future. (E2.A8.1.3.3.) In this case it has been two and a half years since his last use of marijuana and cocaine. The other drug use was four years ago. Applicant has shown he has changed his conduct since assuming responsibilities after graduation. He presented a credible case that he has no intention to use drugs again. He has developed new friendships with colleagues and house-mates all of whom were impressive young men that showed maturity and good judgment. The university environment that surrounded his drug use no longer influences his conduct.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude it is clearly consistent with the national interest to grant a security clearance to him.

FORMAL FINDINGS

Formal findings as required by the Directive (E3.1.25) are as follows:

Paragraph 1. Guideline H: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1 f.: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or renew a security clearance for Applicant. Clearance is granted.

Charles D. Ablard

Administrative Judge