

KEYWORD: Drugs

DIGEST: Applicant, a 21-year-old college student, smoked marijuana once in March 2002 and several times in July 2003. He has never abused any other controlled substance and convincingly testified he will never again use marijuana. He has mitigated his drug involvement. Clearance is granted.

CASENO: 04-06519.h1

DATE: 04/05/2005

DATE: April 5, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06519

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Francisco Mendez, Esquire, Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant, a 21-year-old college student, smoked marijuana once in March 2002 and several times in July 2003. He has never abused any other controlled substance and convincingly testified he will never again use marijuana. He has mitigated his drug involvement. Clearance is granted.

STATEMENT OF THE CASE

On May 10, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline H, for drug involvement. Applicant submitted an answer to the SOR that was received by DOHA on May 26, 2004, requested a hearing, and admitted all SOR allegations.

The case was assigned to me on January 13, 2005. A notice of hearing was issued on January 21, 2005, scheduling the hearing for February 3, 2005. ⁽²⁾ The hearing was conducted as scheduled. The government submitted two documentary exhibits that were marked as Government Exhibits (GE) 1-2, and admitted into the record without objection. Applicant testified and called one witness to testify on his behalf. The transcript was received by the DOHA on February 14, 2005.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 21-year-old college student participating in an electrical engineering co-op program. He has attended college continuously since graduating from high school in May 2001. The co-op program requires him to alternate semesters between working full-time performing electrical engineering assignments, and attending classes while working part-time on engineering tasks. His co-op supervisor, herself a security clearance holder, testified Applicant is extremely reliable and trustworthy. She rates him as one of the top two out of approximately 25 co-op students she has supervised over the past ten years. Applicant has approximately a 3.6 grade point average on a 4.0 scale.

Applicant smoked marijuana with friends while attending college on one occasion in March 2002. He again smoked marijuana four to six times in July 2003 while visiting a foreign country where he testified marijuana use is not criminalized. The July 2003 use occurred after he had submitted a security clearance application in August 2002. Applicant expresses some ambivalence about the propriety of marijuana use by the public at large; however, he convincingly testified he now realizes the use of marijuana by a person in his position, i.e., a security clearance holder seeking work in the defense industry, is wrong and that he will never use it again. There is no other history of drug use or other adverse information about Applicant in the record.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. 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. Considering the evidence as a whole, Guideline H, pertaining to drug involvement, with its DC and MC, is most relevant in this case.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽³⁾ The government has the burden of proving controverted facts.⁽⁴⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence⁽⁵⁾, although the government is required to present substantial evidence to meet its burden of proof.⁽⁶⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁷⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁸⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

No one has a right to a security clearance⁽¹⁰⁾ and "the clearly consistent standard indicates that

security clearance determinations should err, if they must, on the side of denials."⁽¹¹⁾ Any reasonable doubt about whether an applicant should be

allowed access to classified information must be resolved in favor of protecting national security. [\(12\)](#)

CONCLUSIONS

Under Guideline H, illegal drug involvement raises questions about an individual's willingness or ability to protect classified information. Involvement with or use of an illegal drug indicates unwillingness or inability to abide by the law. Cleared employees must respect regulations whether they agree with them or not. If they do not respect the rules on illegal substances, they may not respect the rules designed to protect classified information.

Applicant used marijuana once in March 2002, and several times in July 2003 while visiting a foreign country where he testified marijuana use is legal. The 2003 use occurred while his security clearance application was pending. Disqualifying Condition (DC) 1: *Any drug abuse* applies.

Applicant is a young man who is doing very well in his college studies. His co-op supervisor testified to his reliability and to her evaluation of him as one of the best co-op students she has ever supervised. Applicant sincerely and credibly testified to the poor judgment he displayed in using marijuana and to his resolve to never abuse the drug in the future. Mitigating Conditions (MC) 1: *The drug involvement was not recent*; [\(13\)](#) and MC 2: *A demonstrated intent not to abuse drugs in the future* apply.

Considering all relevant and material facts and circumstances present in this case, including Applicant's young age and student status when he used marijuana, the maturity he has demonstrated since the last use, the recommendation of his supervisor, his overall college record, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has mitigated the security concern under Guideline H, and that guideline is decided for Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline H: For Applicant

Subparagraphs a-c: For Applicant

DECISION

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

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Applicant waived the 15-day notice requirement on the record. (Tr. p. 13)
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
5. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
6. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
7. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
8. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
9. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
10. *Egan*, 484 U.S. at 528, 531.
11. *Id* at 531.
12. *Egan*, Executive Order 10865, and the Directive.
13. Considering Applicant's young age and student status, I find that although only approximately 21 months has passed since he last used marijuana application of this mitigating condition is warranted.