

KEYWORD: Drugs; Personal Conduct; Criminal Conduct

DIGEST: Applicant, a 44-year-old employee of a defense contractor, failed to mitigate allegations of occasional drug use over a 20 year period while holding a security clearance and failure to acknowledge his drug use on three SF 86s and to an investigator. He no longer uses drugs and has not done so since 2002. He mitigated allegation regarding 10 U.S.C. §986 in that he is not a current drug user. Clearance is denied.

CASENO: 04-07229.h1

DATE: 02/13/2006

DATE: February 13, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-07229

**DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant, a 44-year-old employee of a defense contractor, failed to mitigate allegations of occasional drug use over a 20 year period while holding a security clearance and failure to acknowledge his drug use on three SF 86s and to an investigator. He no longer uses drugs and has not done so since 2002. He mitigated allegation regarding 10 U.S.C. §986 in that he is not a current drug user. Clearance is denied.

**STATEMENT OF CASE**

On June 2, 2005, 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 which 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 June 22, 2005, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to me on September 6, 2005. A notice of hearing was issued on September 27, 2005, and a hearing was held on November 17, 2005. Five government exhibits and seven applicant exhibits were admitted into evidence. The Applicant testified. The transcript was received on December 1, 2005.

## **FINDINGS OF FACT**

Applicant admitted all of the specific SOR allegations. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 44-year-old employee of a defense contractor working on network management. He has worked for two companies during his 22-year career. The issues in the case involve Applicant's occasional use of illegal substances during that period while holding a security clearance, and his failure to report that use on three applications for security clearance (SF 86) in 1999 and 2002. On his first two SF 86s he answered in the negative to both Questions 27 and 28 relating to past drug use (Exhs. 2 and 3). On his third SF 86 dated October 7, 2002, he answered in the affirmative to Question 27 concerning past use but in the negative concerning use while holding a security clearance (Exh. 1). He did not report the drug use as he feared the social stigma of admitting the conduct. On ay 21, 2002, Applicant gave false information to a Defense Security Service investigator by denying his drug use. He later admitted use from 1979 until 2002 to the investigator.

The drug uses Applicant has now admitted were use of marijuana approximately ten times over the past 20 years and two uses of hashish while in the Netherlands in 2000. His most recent use was of marijuana in 2002. He does not intend to use drugs in the future.

Applicant was denied a security clearance by the National Security Agency on March 6, 2003, for the same reasons raised in this matter. The denial became final on June 1, 2003.

Applicant is married with two teenage sons, is active in his church, and in his sons' scout program. He has no criminal record or financial problems.

Applicant is well regarded by his supervisors and colleagues who testified for him (Exhs. A, B, and C). Each of the references were aware that the allegations concerned falsification on his SF 86 but did not know that they involved allegations of drug use, and he does not want to tell them. He is performing his work in a highly satisfactory manner and is regarded very favorably by his employer having received top ratings in evaluations (Exhs. D, E, and F).

## **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.), the drug involvement was an isolated or aberrational event (E2.A8.1.3.2), and there is a demonstrated intent not to abuse any drugs in the future. (E2.A8.1.3.3.) While Applicant has not used drugs since 2002 and is unlikely to use in the future, his use was not

isolated and his conduct in failing to acknowledge it on several occasions and to his colleagues who submitted letters of recommendation, leads me to conclude that it is premature to grant a clearance. Also, the fact that he used drugs even occasionally while holding a clearance and while traveling abroad for his company leads me to the conclusion that mitigating conditions should not be applied.

Under Guideline E (Personal Conduct) of the Directive, questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate the person may not properly safeguard classified information. (E2.A5.1.1.) The Government has established that Applicant has been involved in a pattern of rule violations (E2.A5.1.2.5.) and has failed to give complete and accurate information on his SF 86. (E2.A5.1.2.2.) The allegations include the fact that these willful omissions constitute a violation of 18 U.S.C. §1001, a felony. Applicant's rationale for his admitted misstatements to the investigator was the fear of social stigma. No mitigating conditions are applicable.

Under Guideline J (Criminal Conduct) is also applicable to Applicant. The Government has established a sufficient basis that Disqualifying Condition E2.A10.1.1. is applicable to Applicant in that he has had a pattern of criminal conduct. It could be mitigated by application of the facts in the case to certain of the Mitigating Conditions (MC) if the conduct was not recent (E2.A10.1.3.1.), the crime was an isolated incident (E2.A10.1.3.2), the circumstances leading to the violations are not likely to recur (E2.A10.1.3.4.), or there is clear evidence of successful rehabilitation. (E2.A10.1.3.6) The last drug use was almost four years ago so is not recent and, in view of the possible effect of drug use on Applicant's career, it is unlikely to recur. Those conditions are applicable. However, balancing the long term use of drugs, even occasionally, especially while holding a security clearance I find against him on this allegation.

An issue was raised at the hearing regarding the application of 10 U.S.C. §986 which provides a ban on a security clearance to a person who is a current unlawful user of drugs. I conclude that Applicant is not a "current" user as required by the Department of Defense criteria of June 7, 2005. It is for the other reasons stated above that I conclude that a clearance should be denied.

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. Although Applicant is an impressive person of talent who holds a responsible position in his company, his failure to fully report adverse information on several occasions leads to the conclusion that it is premature to grant a security clearance. While he expresses regret for his conduct and the omissions on his SF 86, he has offered excuses and reasons that are not consistent with sound judgment.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude Applicant's record of conduct justifies a finding that it is not clearly consistent with the national interest to grant a security clearance to him. It is premature to grant a clearance.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline H: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: For Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e.: Against Applicant

Paragraph 3. Guideline J: AGAINST 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 renew a security clearance for Applicant. Clearance is denied.

Charles D. Ablard

Administrative Judge