

KEYWORD: Drugs; Personal Conduct

DIGEST: Applicant is a software engineer for a defense contractor. She used a variety of illegal drugs from 1997 to 2003. She used illegal drugs after being granted an interim security clearance, and associated with individuals involved in criminal activities. In 2003, she stopped using illegal drugs, changed her life style, stopped associating with drug users, and sought help from a therapist. Applicant has mitigated security concerns about her prior drug use. Clearance is granted.

CASENO: 04-07769.h1

DATE: 01/23/2006

DATE: January 23, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-07769

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a software engineer for a defense contractor. She used a variety of illegal drugs from 1997 to 2003. She used illegal drugs after being granted an interim security clearance, and associated with individuals involved in criminal activities. In 2003, she stopped using illegal drugs, changed her life style, stopped associating with drug users, and sought help from a therapist. Applicant has mitigated security concerns about her prior drug use. Clearance is granted.

STATEMENT OF THE CASE

On June 14, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on June 21, 2005. The SOR alleges security concerns under Guideline H (Drug Involvement), and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on June 28, 2005, admitting all of the allegations under Guidelines H and E, but denied any drug involvement after July 2003. She requested a hearing before an administrative judge and the request was received by DOHA on July 1, 2005. Department Counsel was prepared to proceed with the case on September 27,

2005, and the case was assigned to me on September 29, 2005. A notice of hearing was issued on November 14, 2005, and the hearing convened on November 30, 2005. Four government exhibits, six Applicant exhibits, and the testimony of the Applicant were received during the hearing. The transcript (Tr.) was received on December 12, 2005.

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 29 years old and has been employed for seven years as a software engineer for a defense contractor. She is a college graduate and is not married. ⁽¹⁾ Applicant used marijuana on two occasions while in college from January 1997 to December 1998. ⁽²⁾

After college, Applicant moved to another state for employment. She was dating a college friend and secured employment for him at her company. After getting his job, he terminated their relationship and started dating another employee in the company. Applicant then started to return home on week-ends and socialize with people from her home area. Some of these people were drug users, and Applicant became a drug user. Applicant used cocaine at least 30 times from the summer 1998 to the summer 2003. She purchased some of the cocaine and received some from friends. She did not purchase cocaine after 2002. She purchased and used ecstasy approximately 25 times from April 2000 until June 2002. She used oxycontin without a prescription approximately five times from June 2001 to January 2002. She purchased and used hydrocodone contrary to medical directions approximately 50 times from April 2000 until March 2002.

Applicant was arrested in October 2000 for conspiracy to sell a controlled substance. She was in the presence of a friend who was selling cocaine but she was not involved in the sale. The charges were dismissed. ⁽³⁾ Applicant was granted an interim security clearance in June 1999. Some of her admitted drug use was after receiving the clearance. ⁽⁴⁾ Applicant admitted associating with a boyfriend who used drugs until she broke off the relationship at the end of 2004. ⁽⁵⁾

Applicant tried to change her life style after her arrest in October 2000. She went to a drug counselor who told her she was not addicted to drugs but was a social user. She tried to refrain from using drugs but did occasionally use cocaine, ecstasy and hydrocodone. Applicant last used drugs in June 2003. She realized in the summer of 2003 she had to change her life style and stop using drugs. She saw a psychiatrist who prescribed medication, lost weight, started eating healthy, and entered an exercise program. She left her boyfriend, the last person she was associating with who used drugs, at the end of 2004. She stopped smoking about the same time. She now picks her friends and associates carefully so that none are drug users. ⁽⁶⁾

Applicant is highly regarded by her employer. She presented performance awards from her employer attesting to her superior performance.⁽⁷⁾ She started a counseling program suggested by the psychiatrist in September 2004 that she still attends. The counselor presented a positive evaluation of Applicant and opined she is not a threat to national security.⁽⁸⁾ Applicant's answers to the SOR and her testimony at the hearing were direct, complete, and unequivocal making her testimony credible.

POLICIES

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."⁽⁹⁾ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.⁽¹⁰⁾

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽¹¹⁾ An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of recurrence.⁽¹²⁾

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.⁽¹³⁾ 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 present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.⁽¹⁴⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁽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."⁽¹⁶⁾ "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability."⁽¹⁷⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽¹⁸⁾

Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline H - Drug Involvement: A security concern exists when there is improper or illegal involvement with drugs, thereby raising questions regarding an 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.

Guideline E - Personal Conduct: A security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions section below.

CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

I considered the security concerns raised under Guidelines H and E together since the concerns arise from the same actions by Applicant, her drug abuse. The government has established its case under Guideline H. Her admission and testimony concerning her use of marijuana in 1997-1998, use and purchase of cocaine, ecstasy, oxycontin, and hydrocodone at various times from 1998 to 2003, and her arrest for unlawful delivery of a controlled substance brings the matter under Drug Involvement Disqualifying Condition E2.A8.1.2.1 (*Any drug abuse*), and E2.A8.1.2.2 (*Illegal drug possession, including cultivation, processing, manufacturing, purchase, sale, or distribution*). Applicant's abuse of drugs after receiving an interim security clearance, and her involvement with persons who use illegal drugs brings the matter under Personal Conduct Disqualifying Conditions E2.A5.1.2.1 (*Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*), E2.A5.1.2.5 (*A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency*), and E2.A5.1.3.6 (*Association with persons involved in criminal activity*). Applicant admits using and purchasing illegal drugs at various times from 1997 to 2003. She admits using the drugs after receive an interim security clearance. She admits associating with a boyfriend who used illegal drugs until December 2004. This information is reliable and unfavorable and shows a pattern of rules violation. I conclude Applicant's admissions and straight forward testimony establishes the above disqualifying conditions.

I have considered Drug Involvement Mitigating Conditions E2.A8.1.3.1 (*The drug involvement was not recent*), E2.A8.1.3.2 (*The drug involvement was an isolated or aberrational event*), and E2.A8.1.3.3 (*A demonstrated intent not to abuse any drugs in the future*). I also have considered Personal Conduct itigating Conditions E2.A5.1.3.1 (*The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability*), E2.A5.1.3.5 (*The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercions, exploitation, or duress*), and E2.A5.1.3.7 (*Association with persons involved in criminal activities has ceased*). Applicant admitted she turned to using and purchasing illegal drugs when the circumstances of her social life changed and she started to associate with former friends who were then illegal drug users. She admitted using a variety of illegal drugs for approximately five years. While she was at the scene when drugs were sold by a friend, she was not involved in the sale and the criminal charges were dismissed. She also sought medical assistance and was told she was not a habitual drug abuser but a social drug user. However over two and half years ago, Applicant realized she needed to change her life and stop using illegal drugs. She stopped using drugs, and her last use of illegal drugs was in June 2003. She changed her live style, lost weight to enhance her self image, stopped smoking, stopped associating with friends who used drugs, and sought help from a therapist. She has not used illegal drugs in over two years and continues with therapy. Her drug abuse was not aberrational or isolated since she used a variety of drugs over a period of times. Since she has not abused drugs since June 2003, her drug abuse is not recent. Applicant has established and demonstrated an intent not to abuse drugs in the future by realizing a need to change her life style, actually changing her life style, and seeking the help of a therapist. Her candid admissions of drug abuse and the steps taken to stop abusing drugs are positive steps eliminating any vulnerability to coercion, exploitation or duress. She no longer associates with persons involved in criminal activities. I conclude Applicant has met her heavy burden to mitigate the security concerns under both Guideline H and Guideline E.

I carefully considered all of the circumstances in light of the "whole person" concept. I considered Applicant's work performance and the recommendation from her therapist. I conclude Applicant is eligible for access to classified information.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegation set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

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

Subparagraph 1.g.: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

DECISION

In light of all of the circumstances in 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.

Thomas M. Crean

Administrative Judge

1. Government Exhibit 1 (Security Clearance Application, dated Jan. 9, 2003).
2. Government Exhibit 3 (Applicant's statement, dated Oct. 29, 2003); Tr. 13-15, 21-25.
3. Government Exhibit 3 (Applicant's statement, dated Oct 29, 2003), at 3-4; Government Exhibit 4 (Court Order, dated Oct. 5, 2001).
4. Tr. 22-27.
5. Tr. 16.
6. TR. 14-16.
7. Applicant Exhibits A-E (Performance Awards, various dates).
8. Applicant Exhibit F (Counselor's letter, dated Nov. 29, 2005).
9. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
10. Directive ¶ E2.2.1.
11. *Id.*
12. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
13. *See* Exec. Or. 10865 § 7.
14. Directive ¶ E3.1.14.
15. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
16. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
17. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

18. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.