

KEYWORD: Drugs; Personal Conduct

DIGEST: Applicant's use of marijuana between summer 1978 and November 2003 was mitigated by the isolated nature of the conduct, the passage of time without recurrence of the conduct, and his demonstrated intent to be drug-free in the future. The record did not support allegations that Applicant falsified his April 2004 clearance application. Clearance granted.

CASENO: 04-08754.h1

DATE: 02/14/2006

DATE: February 14, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-08754

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's use of marijuana between summer 1978 and November 2003 was mitigated by the isolated nature of the conduct, the passage of time without recurrence of the conduct, and his demonstrated intent to be drug-free in the future. The record did not support allegations that Applicant falsified his April 2004 clearance application. Clearance granted.

STATEMENT OF THE CASE

Applicant challenges the 3 May 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of illegal drug use and personal conduct⁽¹⁾. He answered the SOR 27 May 2005, and requested a decision without hearing. He responded to DOHA's 18 July 2005 File of Relevant Material (FORM). The record closed 12 August 2005, when Department Counsel indicated no objection to his response. DOHA assigned the case to me 7 October 2005.

FINDINGS OF FACT

Applicant admitted the drug allegations of the SOR, but denied falsifying his clearance application; accordingly, I incorporate the admissions as findings of fact.

Applicant--a 46-year-old systems administrator employed by a defense contractor since October 2000--seeks access to classified information. He has not previously held a clearance.

Between summer 1978 and November 2003, Applicant used marijuana. He first tried it during the summer of 1978, after he graduated from high school. He used it during college, mostly on weekends, and estimates he used it 8-10 times per month into the mid-1980s. Between 1985 and 1990, he estimates his use dropped to about twice per month. From 1990 to November 2003, he estimates his use dropped to about twice per year. He last used marijuana in November 2003, while out of state on vacation with friends. During the early 1980s, he bought small amounts for his personal use.

When Applicant completed his clearance application in April 2004, he reported using marijuana infrequently between January 1996 and November 2003 (question 27). When Applicant was interviewed by the Defense Security Service (DSS) in May 2004, and asked about his marijuana use he provide the use history described above. He also stated he intended to remain drug free in the future. He was apparently not asked about any discrepancies in the drug history described above and the drug history reported on his clearance application.

In denying any intent to deceive the government in his answer to the SOR and his response to the FORM, Applicant insists that he read question 27 literally--"since the age of 16 or in the last 7 years, **whichever is shorter** (my emphasis)--calculated back seven years from his date of last use in 2003, and accurately reported his marijuana use between January 1996 and 2003.

POLICIES

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline H (Drug Involvement) and Guideline E (Personal Conduct).

BURDEN OF PROOF

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁽²⁾

CONCLUSIONS

The government has established its case under Guideline H, but the Applicant mitigated the security concerns. Applicant used marijuana many times between summer 1978 and November 2003, and he bought user amounts in the early 1980s.⁽³⁾ However, he has since mitigated security concerns. Although his marijuana use must be seen as recent,⁽⁴⁾ and was not isolated or aberrational,⁽⁵⁾ he has demonstrated his intent to be drug free by abstaining from marijuana use since November 2003, before he applied for his clearance. While I have considered Applicant's marijuana use as spanning over 20 years, I have also considered that his marijuana use dropped to a couple of times per year over the last 13 year of use. This indicates to me that there is no physical or psychological issue that would interfere with Applicant's stated intent to remain drug free.⁽⁶⁾ On this record, it is extremely unlikely that Applicant would return to illegal drug use. Accordingly, I resolve Guideline H. for Applicant.

The government failed to establish a Guideline E case. Applicant's answer to question 27 on his clearance application is literally correct, and the government has produced no evidence to demonstrate that Applicant was obligated to produce more. Applicant's explanation for his answer to question 27 is more than plausible, and is sufficient to negate any intent to deceive.⁽⁷⁾ Further, even if I concluded (which I do not) that Applicant was required to report this marijuana use beyond the last seven years on his clearance application, I would still conclude he mitigated the security concerns. The marijuana use between 1978 and 1996 was not relevant--or certainly less relevant--to a clearance decision than the

marijuana use he did report.⁽⁸⁾ Although the putative misrepresentation was recent in the context of his clearance application, it was isolated, and the only available evidence (his sworn statement) demonstrates he provided the correct information voluntarily⁽⁹⁾ and did so before being confronted with any discrepancies.⁽¹⁰⁾ The only substantive evidence the government produced to support its case was generated by Applicant, comprising Applicant's April 2004 clearance application and his May 2004 sworn statement to the DSS. The full range of marijuana use the government alleges as the "true" use was given by Applicant in his sworn statement, provided it in response to the DSS agent's inquiry. All the evidence suggests Applicant freely volunteered the information when asked an open-ended question by the agent. The agent was apparently not sufficiently concerned about the marijuana use before 1996 to ask the Applicant why he omitted it, because the sworn statement contains no mention of it. The government produced no evidence suggesting it had independent information with which to confront Applicant about the range of use he gave on his clearance application. I conclude Guideline E for Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline H: FOR APPLICANT

Subparagraph a: For Applicant

Subparagraph b: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph a: 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 granted.

John Grattan Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
3. E2.A8.1.1.1. Improper or illegal involvement with drugs raises 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.
- E2.A8.1.2.1. Any drug abuse (see above definition); E2.A8.1.2.2. Illegal drug possession, including . . . purchase,
4. E2.A8.1.3.1. The drug involvement was not recent;
5. E2.A8.1.3.2. The drug involvement was an isolated or aberrational event;
6. E2.A8.1.3.3. A demonstrated intent not to abuse any drugs in the future;
7. E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;
8. E2.A5.1.3.1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability;
9. E2.A5.1.3.2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;
10. E2.A5.1.3.3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts;