

KEYWORD: Drugs

DIGEST: Applicant's abuse of marijuana from 1977 to December 2002, and cocaine from 1977 to January 2000, was not mitigated where Applicant's statements of intent to refrain from drug use in the future were not credible, given that he resumed drug abuse when his clearance was terminated in 1995 and his current willingness to refrain was conditioned on obtaining his clearance. Clearance denied.

CASENO: 04-08823.h1

DATE: 01/31/2006

DATE: January 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-08823

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's abuse of marijuana from 1977 to December 2002, and cocaine from 1977 to January 2000, was not mitigated where Applicant's statements of intent to refrain from drug use in the future were not credible, given that he resumed drug abuse when his clearance was terminated in 1995 and his current willingness to refrain was conditioned on obtaining his clearance. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 10 June 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of illegal drug use⁽¹⁾. He answered the SOR 6 July 2005, and requested a decision without hearing. He did not respond to DOHA's 28 September 2005 File of Relevant Material (FORM). The record closed 2 November 2005, when his response was due. DOHA assigned the case to me 28 November 2005.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR, except for subparagraphs 1.e., 1.g., and 1.h.;⁽²⁾ accordingly, I incorporate the admissions as findings of fact.

Applicant--a 45-year-old sales engineer employed by the same defense contractor since August 1985--seeks access to classified information. He reports having held a clearance from 1988 to 1995.

When Applicant completed his most-recent clearance application in September 2003, he reported use of cocaine and marijuana within the last seven years (question 27). He reported using cocaine 25 times between January 1980 and January 2000. He reported using marijuana "many" times between January 1978 and December 2002. He denied having used drugs while possessing a security clearance (question 28). In a November 2003 sworn statement, he briefly described his recent drug use, referred to past drug use he disclosed during a background investigation in 1988, and reiterated that he did not use any illegal drugs while he held a clearance between 1988 and 1995. He stated "I have no intention of further usage of illegal drugs," and explained that he did not plan on using drugs again and offered that he was "pretty stupid doing this again at this age of my life."

When Applicant applied for a clearance in late 1987 or early 1988, he apparently omitted his drug use from 1977 to 1988 from his application. He made two sworn statements in May 1988 in which he described regular use of marijuana from 1977 to 1985, and somewhat less regular use of cocaine during the same dates. He attributed his initial drug use to curiosity and his continued drug use to peer pressure. He insisted that he stopped using illegal drugs in 1985 because of his job and its attendant responsibility. He described his career as the most important thing to him and stated he had "no future intent to use marijuana or cocaine or any other type of illegal drug." He denied falsifying his clearance application and explained the omission of his drug history variously as "no current usage" or "no current usage for 3 years." Based on these representations, Applicant was apparently granted his clearance in May 1988.

In his answer, Applicant admits to using marijuana from 1977 to 1988, and from 1995 to December 2002. He admits to using marijuana after his 1988 statement that he would not use drugs in the future. He specifically denies using cocaine at any time while he held a clearance, and later insists that he used no illegal drugs while holding a clearance.

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 guideline is Guideline H (Drug Involvement).

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.⁽³⁾

CONCLUSIONS

The government has established its case under Guideline H, and the Applicant has not mitigated the conduct. Applicant was a recreational user of marijuana from approximately 1977 to at least December 2002, and a recreational user of cocaine from 1977 to at least January 2000.⁽⁴⁾ Clearly, the illegality of the conduct did not affect Applicant's decision to use marijuana and cocaine. Nor did Applicant show any concern for his employer and any drug policy it might have.

Applicant has made inconsistent statements regarding the nature and extent of his drug use, both during his 1988 background investigation and the current one. He has admitted marijuana abuse to at least 1988--the date his clearance was first granted--but stated in 1988 that he had stopped in 1985--his stated reason for not disclosing his drug abuse on his first clearance application. However, his stated cessation date of 1985 coincides with his employment date with his current employer. Similarly, his 2003 clearance application reports marijuana use from 1978 to 2002 and cocaine use from 1980 to 2000, neither report reserving any periods of non-use. Yet his November 2003 sworn statement insists--as he has since--that he used no drugs while he had a clearance between 1988 and 1995.

I have no records confirming that Applicant had no clearance from 1988 to 1995. But I do have his admission that he used drugs from 1985 to 1988 and from 1995 to 2000/2002, all while employed by the same employer. Although the record is silent, it is beyond the realm of credibility that the employer has a drug policy that tolerates illegal drug abuse. In truth, I find Applicant's claims that he was drug free while he held a clearance less than credible on this record, but I will not engage in speculation. However, I can conclude that he has not proved to my satisfaction that he was drug free during that time. Nevertheless, even if I concluded that Applicant had remained drug free while holding a clearance the last time, I would not find him eligible for a clearance today.

Applicant meets none of the mitigating conditions for drug involvement. His drug use is recent, ending--at best nine months before he reapplied for his clearance. (5) His drug use was not isolated or aberrational. (6) He has not demonstrated an intent to refrain from drug use in the future. (7) Applicant now vows--as he did in 1988--to refrain from illegal drug abuse. To his credit, he does not offer protestations that he has seen the virtue of remaining drug-free in the future because of the importance of his job, as he did in 1988. He candidly promises only to remain drug-free during any period of time he holds a clearance. This is insufficient to demonstrate an intent to refrain from drug abuse in the future. Demonstrated intent is not a coat to be put on when one applies for a clearance and taken off again any time a clearance is no longer required. Further, Applicant does not grasp the concept that when he resumed drug abuse in 1995, he put the classified information that he had acquired from 1988 to 1995 potentially at risk, just as he clearly implies he would put the classified information he would have access to in the future at risk once he no longer required a clearance. Accordingly, I resolve Guideline H. against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline H: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. However, the allegations in 1.c. and 1.d. are identical, and the allegations at 1.g. and 1.h. are identical.
3. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
4. 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,
5. E2.A8.1.3.1. The drug involvement was not recent;
6. E2.A8.1.3.2. The drug involvement was an isolated or aberrational event;
7. E2.A8.1.3.3. A demonstrated intent not to abuse any drugs in the future;