

KEYWORD: Drugs; Personal Conduct

DIGEST: Applicant's use of cocaine seven times between January and February 2002 was mitigated by the isolated nature of the conduct, the passage of time without recurrence of the conduct, Applicant's seeking counseling to address the reasons he tried cocaine, and Applicant's demonstrated intent to be drug-free in the future. The record did not support allegations that Applicant falsified his March 2003 clearance application. Clearance granted.

CASENO: 04-09073.h1

DATE: 02/13/2006

DATE: February 13, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09073

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's use of cocaine seven times between January and February 2002 was mitigated by the isolated nature of the conduct, the passage of time without recurrence of the conduct, Applicant's seeking counseling to address the reasons he tried cocaine, and Applicant's demonstrated intent to be drug-free in the future. The record did not support allegations that Applicant falsified his March 2003 clearance application. Clearance granted.

STATEMENT OF THE CASE

Applicant challenges the 18 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⁽¹⁾. He answered the SOR 5 June 2005, and requested a decision without hearing. He did not respond to DOHA's 27 October 2005 File of Relevant Material (FORM). The record closed 9 December 2005, when his response was due. DOHA assigned the case to me 22 December 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 42-year-old structural assembler employed by a defense contractor since February 2003--seeks access to classified information. He has not previously held a clearance.

Between January 2002 and February 2002, Applicant used cocaine approximately seven times with acquaintances in social settings. At the time, he was experiencing marital problems and his friends--who were using cocaine--suggested that cocaine might take his mind off his problems. All his cocaine use occurred at a friend's house, and he usually "chipped in" for the cost. In February 2002, he tested positive for cocaine use on a random drug screen by his employer, an overnight delivery company, and was fired. Applicant realized his cocaine use had been a big mistake and he resolved to never become involved with illegal drugs again. Applicant and his wife participated in several group marital counseling sessions at their church, and got private marital counseling from a psychiatrist on six or seven occasions between February and March 2002. He reports that they have a much better relationship after the counseling.

When Applicant completed his clearance application in March 2003, he reported using cocaine seven times between January 2001 and February 2001 (question 27). He also reported being fired from a job with an overnight delivery company in March 1999 because of a positive drug screen (question 20).

When Applicant was interviewed by the Defense Security Service (DSS) in June 2004, he was asked to review his clearance application and confirm the accuracy of the entries. Applicant noted a typographical error in the reported dates of his drug use, and gave the agent the correct January-February 2002 dates. He also noted that the March 1999 firing date was incorrect (being instead the date he transferred from one company office to another, and provided the agent the correct February 2002 date. [\(2\)](#)

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.⁽³⁾

CONCLUSIONS

The government has established its case under Guideline H, but the Applicant mitigated the security concerns. Applicant used cocaine seven times between January and February 2002, contributed to the purchase of the cocaine on a few occasions, and was fired for a cocaine-positive drug screen in February 2002.⁽⁴⁾ However, Applicant's conduct since he was fired mitigates the security concerns. Although his cocaine use must be seen as recent,⁽⁵⁾ it was isolated and aberrational.⁽⁶⁾ He had no illegal drug use before January 2002 and none after February 2002. More pertinent to the security concerns, he realized what a mistake his cocaine use was and resolved to avoid illegal drugs, a decision he made more than a year before obtaining work with a federal contractor and applying for a security clearance. Further, Applicant and his wife sought marital counseling for the issues that were troubling their marriage--and that lead Applicant to try illegal drugs for the first time in his life--and resolved those issues through counseling. This counseling, coupled with Applicant's remaining drug-free since February 2002, demonstrates his intent to abstain from illegal drugs in the future.⁽⁷⁾ 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 truthfully reported the details of the only two pieces of derogatory information in his background investigation: his cocaine use and his being fired from a job for a positive

drug test. He reported these events under dates that were themselves relevant and material to a clearance determination. Neither the cocaine use nor the job dismissal are made inherently more relevant and material by Applicant's correcting those dates to February 2002.

Further, even if I concluded that there was a relevant and material difference between the dates Applicant reported on his clearance application and the corrected dates he gave during his subject interview, the record clearly indicates Applicant intended no deception.⁽⁸⁾ He could gain nothing by a falsification, and the government could not have been misled about the nature and extent of Applicant's drug use, even if it had never learned the correct dates. Applicant's explanations for the discrepancies in dates are more than plausible. In one instance, his explanation is corroborated by his employment record that shows a job relocation with the same employer.

Finally, even if I concluded (which I do not) that Applicant deliberately gave false dates on his clearance application, I would still conclude he mitigated the security concerns. The putative misrepresented information was not relevant to a clearance decision.⁽⁹⁾ Although the putative misrepresentations were recent in the context of his clearance application, they were isolated, and the only available evidence (his sworn statement) demonstrates he provided the correct information voluntarily⁽¹⁰⁾ and did so before being confronted with any discrepancies.⁽¹¹⁾ The only substantive evidence the government produced to support its case was generated by Applicant, comprising Applicant's March 2003 clearance application and his June 2004 sworn statement to the DSS. The dates the government alleges as the "true" dates were given by Applicant in his sworn statement, who contemporaneously corrected the "typos" in his clearance application. All the evidence suggests Applicant volunteered the information while reviewing his clearance application. The government produced no evidence suggesting it had independent information with which to confront Applicant about the dates 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

Subparagraph c: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph a: For Applicant

Subparagraph b: 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. The employment section of Applicant's clearance application confirms that Applicant changed locations with the same employer in March 1999.
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;
8. 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. . .;

9. E2.A5.1.3.1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability;

10. E2.A5.1.3.2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;

11. E2.A5.1.3.3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts;