

KEYWORD: Drugs

DIGEST: Applicant illegally abused marijuana from the late 1970's until 1982, motivated by social pressure and because marijuana made him feel better in certain situations. After abstaining for 13 years, he resumed its use again from 1995 until late 2001, this time motivated by some social anxiety and depression, and to feel better. He has abstained since 2001. Applicant's actions, especially after he had been granted a security clearance in October 1990, reflect a high degree of questionable judgment and irresponsibility. He has not undergone an evaluation or diagnosis related to substance abuse, and has never participated in any therapeutic or rehabilitative substance abuse program. In the absence of a longer current period of abstinence, his new vow to abstain cannot yet be construed as a demonstrated intent not to abuse any drugs in the future. Clearance is denied.

CASE NO: 04-09239.h1

DATE: 05/12/2006

DATE: May 12, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09239

DECISION OF CHIEF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant illegally abused marijuana from the late 1970's until 1982, motivated by social pressure and because marijuana made him feel better in certain situations. After abstaining for 13 years, he resumed its use again from 1995 until late 2001, this time motivated by some social anxiety and depression, and to feel better. He has abstained since 2001. Applicant's actions, especially after he had been granted a security clearance in October 1990, reflect a high degree of questionable judgment and irresponsibility. He has not undergone an evaluation or diagnosis related to substance abuse, and has never participated in any therapeutic or rehabilitative substance abuse program. In the absence of a longer current period of abstinence, his new vow to abstain cannot yet be construed as a demonstrated intent not to abuse any drugs in the future. Clearance is denied.

STATEMENT OF THE CASE

On August 12, 2002, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86). (1) On July 19, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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. The SOR detailed reasons under Guideline H (drug involvement) 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, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn, written statement, undated but received on August 15, 2005, Applicant responded to the SOR allegations and requested a hearing. Department Counsel indicated the government was ready to proceed on January 17, 2006, and the case was assigned to me on January 23, 2006. A notice of hearing was issued on February 1, 2006, scheduling the hearing for February 23, 2006. It was held as scheduled. During the hearing, two Government exhibits, five Applicant exhibits, and the testimony of three Applicant witnesses (including Applicant) were received. The transcript (Tr.) was received on March 6, 2006.

RULINGS ON PROCEDURE

The government moved to amend the SOR to conform to the expected evidence. More specifically, it sought the following change to subparagraph 1.a. of the SOR: delete the year "1970" and substitute the words "the late 1970s." There being no objection to the motion by Applicant, the motion was granted and the SOR amended as stated.⁽²⁾ Also, Applicant moved to amend the same subparagraph, as follows: delete the word "November" and substitute the word "September." The government objected, preferring to wait until the entire record evidence was available, and action on the motion was deferred.⁽³⁾ At the closing of the record the matter was not again raised, and there was no final resolution to the motion.

The government also objected to highlighted portions of Applicant Exhibit C, a letter from a licensed psychologist proffered as the report of an expert witness, because no foundation had been laid and no opportunity had been given to examine the author of the report.⁽⁴⁾ The government eventually withdrew its objections to the entire document and, instead, moved to strike or redact the highlighted portions of the document.⁽⁵⁾ The motion was granted,⁽⁶⁾ but Applicant was given leave until March 6, 2006, to call the author as a witness at a subsequent hearing to be examined.⁽⁷⁾ No further action was taken as Applicant declined to call the witness.

FINDINGS OF FACT

Applicant admitted most of the factual allegations pertaining to drug involvement under Guideline H (subparagraphs 1.b., 1.c., and a portion of 1.a.). Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 45-year-old employee of a defense contractor. He is seeking to obtain a Top Secret security clearance,⁽⁸⁾ and was previously granted a secret security clearance in October 1990.⁽⁹⁾ He has been employed by the same government contractor since August 1990, was promoted on several occasions,⁽¹⁰⁾ and currently serves in the staff category of associate staff member.⁽¹¹⁾ His immediate supervisor and a work colleague both support his application and characterize Applicant as hardworking, trustworthy, and responsible.⁽¹²⁾ The overall assessment of his work performance is "excellent."⁽¹³⁾

He received a B.A. degree in English in 1982,⁽¹⁴⁾ and an M.S. degree in computer science in 1997.⁽¹⁵⁾ He was married in 1987,⁽¹⁶⁾ had two children, born in 1989 and 1998, respectively,⁽¹⁷⁾ separated in 2000,⁽¹⁸⁾ and was divorced due to irreconcilable differences in 2002.⁽¹⁹⁾ His ex-wife considers him to be honest, trustworthy, and responsible.⁽²⁰⁾ She was unaware of any substance abuse by Applicant.⁽²¹⁾

Applicant was a substance abuser whose choice of substances was marijuana. He started using it in the late 1970's, when he was a teenager,⁽²²⁾ for unspecified reasons, and continued using it on an infrequent basis⁽²³⁾ until he graduated from undergraduate school in 1982.⁽²⁴⁾ He contends he abstained from 1982 until 1995,⁽²⁵⁾ and there is no evidence to rebut his contention.

At some point in 1995, while experiencing the initial stages of marital turmoil, he was reintroduced to marijuana by his brother-in-law--his wife's brother--who had moved into Applicant's residence on a temporary basis while attending a local university.⁽²⁶⁾ His resumption of marijuana abuse occurred one night when he and his brother-in-law were "hanging out" in the family residence and they started using the substance.⁽²⁷⁾ Thereafter, until about September 2001 or November 2001,⁽²⁸⁾ on about 10 occasions, while attending concerts as well as during social events and parties at friends' homes and in his neighborhood, he abused marijuana.⁽²⁹⁾ He smoked it in both cigarette form and in a pipe.⁽³⁰⁾ Applicant purchased marijuana, for his own use, on a few occasions,⁽³¹⁾ but only one of those purchases took place after 1995.⁽³²⁾

Applicant used marijuana for a variety of reasons. In January 2004, he claimed he was initially influenced by curiosity and the social setting in which he found himself, and because marijuana induced a mellow contemplative feeling.⁽³³⁾ His therapist opined:⁽³⁴⁾

Contributing factors were his social anxiety and lack of confidence in social situations, difficulty managing painful affects and interpersonal conflict, and a wish to participate in social interaction in a more relaxed manner; these factors were exacerbated by his distress over his marital situation and his wife's decision to seek a separation and divorce.

During the hearing he stated his initial use was motivated because of social pressure and because he believed marijuana would make him feel better in certain situations.⁽³⁵⁾ His subsequent use was to ease some social anxiety or maybe even depression over the state of his marriage, and to feel better.⁽³⁶⁾

Applicant asserts he ceased abusing marijuana because of the lifestyle changes which occurred as a result of his divorce. He is now active in church,⁽³⁷⁾ family, and fitness activities,⁽³⁸⁾ and vows to abstain from future marijuana abuse.⁽³⁹⁾

Applicant recognized that marijuana abuse was illegal,⁽⁴⁰⁾ and he hid his use from his wife and children.⁽⁴¹⁾ He also knew marijuana abuse while holding a security clearance was contrary to government policy, and kept his substance abuse from his employer.⁽⁴²⁾ He denies knowing that marijuana abuse was contrary to corporate policy.⁽⁴³⁾

Although he became a teaching fellow at a university, he hid the fact of his substance abuse from the university because such information would have adversely affected his reputation within the university.⁽⁴⁴⁾ Likewise, he did not volunteer his drug use when completing his employment application for his employer.⁽⁴⁵⁾ He did, however, volunteer his history of substance abuse on his SF 86 in August 2002.⁽⁴⁶⁾

In July 2000, Applicant underwent marital counseling and therapy to deal with his deteriorating marital relationship as well as social anxiety.⁽⁴⁷⁾ That professional relationship eventually included issues related to his substance abuse, but that was not the primary reason for the therapy.⁽⁴⁸⁾ No evaluation or diagnosis related to substance abuse was made.⁽⁴⁹⁾ Applicant has never participated in any therapeutic or rehabilitative substance abuse program,⁽⁵⁰⁾ and the collateral exposure to the topic of substance abuse while participating in marital therapy does not qualify as such.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an Administrative Judge should consider are: (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 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 pertinent 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.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Drug Involvement--Guideline H: 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.

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

Since the protection of the national security is the paramount consideration, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security," [\(51\)](#) or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I conclude that both standards are one and the same. In reaching this Decision, I draw only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I avoid drawing inferences that are grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate that it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that 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. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of credibility, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

The government has established its case under Guideline H. Applicant's illegal use of marijuana from the late 1970's until 1982 and again from 1995 until late in 2001 is of concern, especially in light of his desire to have continuing access to the nation's secrets. Marijuana use was, and remains, against the law, DoD policy, and his corporate policy. The Directive clearly expresses the government's concern regarding drug involvement in provision 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*). Drug abuse is defined in provision E2.A8.1.1.3. (*the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction*). Provision E2.A8.1.1.2.1. generally identifies and defines drugs, as follows (*drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens)*). Applicant's overall conduct pertaining to his illegal substance abuse, including his use and purchase of marijuana, clearly falls within Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1. (*any drug abuse*), and DI DC E2.A8.1.2.2. (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*).

The earlier activity initially occurred when Applicant was a relatively young adult attending college, and motivated by social pressure and because marijuana made him feel better in certain situations. Had such conduct ceased and not been repeated, it would have been of limited security concern. However, after abstaining for 13 years, he resumed using marijuana for another 6 years, this time motivated by some social anxiety and depression over his marital situation, and to feel better. Applicant's actions, especially after he had been granted a security clearance in October 1990, reflect a

high degree of questionable judgment, irresponsibility, and immature behavior. He destroyed his fiduciary relationship with the government over his zeal for marijuana and placed his own drug-induced pleasures above those fiduciary responsibilities as a holder of a security clearance. His actions fall within DI DC E2.A8.1.2.5. *(failure to successfully complete a drug treatment program prescribed by a credentialed medical professional. Recent drug involvement, especially following the granting of a security clearance, or an expressed intent not to discontinue use, will almost invariably result in an unfavorable determination).*

It might be argued the most recent marijuana involvement, occurring in September or November 2001, was not recent, a condition recognized under Drug Involvement Mitigating Condition (DI MC) E2. A8.1.3.1. *(the drug involvement was not recent)*. While the presence or absence of rehabilitation and other pertinent behavioral changes are significant factors in the overall adjudicative process, the presence or absence of one particular condition is not controlling. In this instance, I consider Applicant's marijuana use in 2001 to be recent.

Applicant's occasional use of marijuana during the late 1970's-82, and again during 1995-2001, removes his actions from the application of DI MC E2.A8.1.3.2. *(the drug involvement was an isolated or aberrational event)*.

Although he participated in some psychotherapy, primarily related to marital issues, Applicant has not undergone an evaluation or diagnosis related to substance abuse, and has never participated in any therapeutic or rehabilitative substance abuse program. Thus, these circumstances negate the full application of DI MC E2.A8.1.3.4. *(satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional)*.

Applicant asserts he abstained from using marijuana during 1982-95 and again since late 2001. He has offered no evidence as to his motivation for abstaining during 1982-95. On the other hand, he has explained his motivation for his initial and early substance abuse, and tried to justify his subsequent substance abuse. That substance abuse was illegal and against government policy--facts known to Applicant at the time he was abusing marijuana--was of no concern to him. Neither was the fact that he had been granted a security clearance in October 1990. It was more important to him that concerts, parties with friends, and other social events be enjoyed while abusing marijuana. Marijuana was his crutch in confronting certain emotional issues.

I possess little confidence that Applicant's overall substance abuse is a thing of the past that will not recur. After initially abstaining for 13 years, he resumed his substance abuse. This time, his current period of abstinence has lasted nearly five years. In the absence of a longer current period of abstinence, his new vow to abstain cannot yet be construed as a "demonstrated intent not to abuse any drugs in the future," as set forth in DI MC E2.A8.1.3.3. *(a demonstrated intent not to abuse any drugs in the future)*. Under these circumstances, Applicant has failed to mitigate or overcome the government's case. Accordingly, allegations 1.a. through 1.c. of the SOR are concluded against Applicant.

There are grave doubts as to Applicant's continued security eligibility and suitability. For the reasons stated, I conclude Applicant is not eligible for access to classified information.

FORMAL FINDINGS

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

Paragraph 1., Guideline H: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: 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 is denied.

Robert Robinson Gales

Chief Administrative Judge

1. Government Exhibit 1 (Security Clearance Application, dated January 23, 2003).
2. Tr. at 10-11.
3. Tr. at 11.
4. Tr. at 65-66.
5. Tr. at 69.
6. Tr. at 74-75.
7. Tr. at 75-77.
8. Tr. at 25.
9. Government Exhibit 1, *supra* note 1, at 7; Tr. at 22-23.
10. Applicant Exhibit D (Company Memorandum, subject: Recommendation for Promotion, dated May 9, 1996; Company Memorandum, subject: Proposed Promotion, dated May 29, 1998).
11. Government Exhibit 1, *supra* note 1, at 2.
12. Tr. at 82.
13. Applicant Exhibit D (Annual Performance Appraisal Form, dated August 15, 2005).
14. Tr. at 25, 27.
15. Applicant Exhibit D, *supra* note 6 (1998 memorandum).
16. Applicant Exhibit B (letter from ex-wife, dated February 15, 2006).
17. Government Exhibit 1, *supra* note 1, at 4.
18. Tr. at 23.
19. Applicant Exhibit B, *supra* note 12.
20. *Id.*
21. *Id.*
22. Tr. at 26.
23. Tr. at 26.
24. Tr. at 27.
25. Tr. at 27, 40.
26. Tr. at 27, 49.
27. Tr. at 28.
28. Applicant's memory as to the last time he remembers using marijuana is such that on two occasions, when he completed his SF 86 in August 2002, and when he furnished his sworn statement in January 2004, he stated his last use

occurred in November 2001. In his Response to SOR in August 2005, and during the hearing in February 2006, he contended the date was September 2001.

29. Government Exhibit 2 (Statement, dated January 27, 2004), at 2; Government Exhibit 1, *supra* note 1, at 7; Tr. at 30.

30. *Id.* Government Exhibit 2.

31. *Id.*

32. Tr. at 40, 42.

33. Government Exhibit 2, *supra* note 25, at 2.

34. Applicant Exhibit C (letter from licensed psychologist, dated February 15, 2006) at 1.

35. Tr. at 47.

36. Tr. at 47.

37. Tr. at 88-93.

38. Tr. at 51.

39. Government Exhibit 2, *supra* note 25, at 2.

40. Tr. at 29, 44.

41. Tr. at 29, 31.

42. Tr. at 33, 44.

43. Tr. at 44.

44. Tr. 34.

45. Tr. at 34.

46. Government Exhibit 1, *supra* note 1, at 7.

47. Applicant Exhibit C, *supra* note 34, at 1.

48. Tr. at 46.

49. Tr. at 46.

50. Tr. at 46.

51. The Directive, as amended by Change 4, dated April 20, 1999, uses "clearly consistent with the national interest" (Sec. 2.3.; Sec.2.5.3.; Sec. 3.2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1.; Sec. E3.1.2.; Sec. E3.1.25.; Sec. E3.1.26.; and Sec. E3.1.27.), and "clearly consistent with the interests of national security" (Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (Enclosure 2, Sec. E2.2.2.).