

KEYWORD: Drugs; Personal Conduct

DIGEST: Applicant's regular abuse of marijuana commenced in June 1989, when he was about 15 years old, and continued unabated for nearly 14 years, until it ceased in January 2003. His experimentation with cocaine ceased after two episodes in about 1992. In June 2004, he indicated he still associated with friends who use marijuana and that he would probably use it again if it were offered to him in the future. In October 2005, his position changed and he indicated he will not use marijuana in the future. The newly revised future intentions, coming as they do at the eleventh hour, do little to inspire confidence that Applicant's overall substance abuse is a thing of the past that will not recur, and cannot yet be construed as a "demonstrated intent not to abuse any drugs in the future." Clearance is denied.

CASENO: 04-10174.h1

DATE: 03/20/2006

DATE: March 20, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-10174

DECISION OF CHIEF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's regular abuse of marijuana commenced in June 1989, when he was about 15 years old, and continued unabated for nearly 14 years, until it ceased in January 2003. His experimentation with cocaine ceased after two episodes in about 1992. In June 2004, he indicated he still associated with friends who use marijuana and that he would probably use it again if it were offered to him in the future. In October 2005, his position changed and he indicated he will not use marijuana in the future. The newly revised future intentions, coming as they do at the eleventh hour, do little to inspire confidence that Applicant's overall substance abuse is a thing of the past that will not recur, and cannot yet be construed as a "demonstrated intent not to abuse any drugs in the future." Clearance is denied.

STATEMENT OF THE CASE

On September 27, 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 Guidelines H (drug involvement) and E (personal conduct), 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 answer, dated October 13, 2005, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the government's written case on January 13, 2006. A complete copy of the file of relevant material (FORM) [\(1\)](#) was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Any such submissions were due by February 23, 2006. He chose not to respond. The case was assigned to me on March 17, 2006.

FINDINGS OF FACT

Applicant admitted the three factual allegations pertaining to drugs under Guideline H (subparagraphs 1.a. through 1.c.). Those admissions are incorporated herein as findings of fact. He denied the allegation pertaining to personal conduct under Guideline E (subparagraph 2.a.). 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 32-year-old employee of a defense contractor, and is seeking to obtain a secret security clearance.⁽²⁾ He has been with his current employer since December 1996, and presently holds the position of mechanical technician.⁽³⁾ The quality of his work performance has not been provided. Applicant was married in October 1996 and divorced in May 2001.⁽⁴⁾ He has one daughter, born in March 1997.⁽⁵⁾

He was a substance abuser whose choice of illegal substances was marijuana and cocaine.⁽⁶⁾ He started abusing marijuana in approximately June 1989, when he was about 15 years old. He used it on a regular basis, between 2-3 times per month to 2-3 times per week, at parties, while camping, and at social gatherings, until about January 2003.⁽⁷⁾ Marijuana made him feel relaxed.⁽⁸⁾ It is unclear what factors motivated him to stop using marijuana in January 2003, because in June 2004, he indicated he still associated with friends who use marijuana⁽⁹⁾ and that he "would probably use it" if it were offered to him in the future.⁽¹⁰⁾ Sixteen months later, he altered his position *vis-a-vis* possible future marijuana use, repudiated that position, and declared: I have come to realize how important being accepted to hold a security clearance is to me. There for [sic], I will not jeopardize that by doing anything that does not comply with DoD Directive 5220.6.⁽¹¹⁾

During the period of his marijuana abuse, Applicant purchased the substance through friends, spending approximately \$200-\$300 per year.⁽¹²⁾ He never cultivated or sold marijuana.⁽¹³⁾

Applicant also experimented with cocaine on two occasions in about 1992, when he was in high school,⁽¹⁴⁾ but did not continue using the substance because it made him feel hyper and energetic--reactions he did not like.⁽¹⁵⁾ In June 2004, he stated he had ceased using cocaine and vowed never to use it again in the future.⁽¹⁶⁾

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 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 guidelines most pertinent to an evaluation of the facts of this case:

Guideline H - Drug Involvement: 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.

Personal Conduct - Guideline E: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations 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 could mitigate security concerns, pertaining to these adjudicative guidelines are set forth and discussed in the Conclusions section below.

Because 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,"⁽¹⁷⁾ or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded all of the standards are the same. In reaching this Decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences 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, 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 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 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 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 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 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 considering of all the facts in evidence, and after applying all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

The government has established its case under Guideline H. Applicant's illegal marijuana and cocaine use is of concern, especially in light of his desire to have access to the nation's secrets. 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.A8.1.2.1. generally identifies and defines drugs as (*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 did not simply experiment with marijuana a few times, as a teenager or young adult, out of curiosity and then quit, as he did with cocaine. Instead, he commenced regularly using marijuana, and continued doing so for nearly 14 years because of its relaxing effects. The illegal nature of his endeavor was of no significance to him. By his actions over that 14-year period, he exhibited a continuing pattern of questionable judgment, irresponsibility, and immature behavior. Applicant's overall conduct pertaining to his illegal substance abuse clearly falls within Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1. (*any drug abuse*).

One controversial issue in this case pertains to Applicant's future intentions. While there has been no development of his employer's drug policy, as a government contractor, it is presumed that its policy coincides with the government's "zero tolerance" policy. I construe Applicant's initial position in this regard as follows: He is indifferent towards the use of marijuana, but apparently sees nothing wrong with abusing it and may continue to do so if the opportunity presents itself. However, now that he has received an SOR challenging his eligibility and suitability for a security clearance, there has been an epiphany, and he now claims he will not do so because he realizes the importance being granted a security clearance. The newly revised future intentions, coming as they do at the eleventh hour, do little to inspire confidence that Applicant's overall substance abuse is a thing of the past that will nor recur.

Since Applicant has abstained from cocaine experimentation since about 1992 and from regular marijuana abuse since January 2003, it might be argued such abuse was not recent, a condition recognized under Drug Involvement Mitigating Condition (DI MC) E2. A8.1.3.1. (*the drug involvement was not recent*). In this instance, I consider Applicant's marijuana abuse to be recent.

Applicant's regular marijuana abuse removes his actions from the application of DI MC E2.A8.1.3.2. (*the drug involvement was an isolated or aberrational event*).

In the absence of a longer period of abstinence, Applicant's new vow 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 under Guideline H. Accordingly, allegations 1.a. through 1.c. of the SOR are concluded against Applicant.

The government has established its case under Guideline E. As noted above, Applicant's conduct was predominately drug-related, but also criminal. And, because it involved questionable judgment, untrustworthiness, and unreliability, personal conduct becomes an issue, however redundant. Applicant's repeated violations of the law and DoD policy, fall within Personal Conduct Disqualifying Condition (PC DC) 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*). However, as drafted, this portion of the SOR does not refer to Applicant's drug-related conduct. Instead, it refers to his continuing association with friends who use marijuana. This rather limited situation falls within PC DC E2.A5.1.2.6. (*association with persons involved in criminal activity*). In June 2004, Applicant indicated he was still associating with those friends who used marijuana. In October 2005, he indicated that was no longer true. In the absence of evidence to the contrary, his new statement on associations brings this matter within Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.7. (*association with persons involved in criminal activities has ceased*). Thus, in light of the evidence presented, Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the government's case under Guideline E. Accordingly, allegation 2.a. of the SOR is concluded in favor of Applicant.

There are doubts as to Applicant's 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 APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Paragraph 2., Guideline E: FOR APPLICANT

Subparagraph 2.a.: For 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. The government submitted five items in support of the allegations.
2. Item 3 (Response to SOR, dated October 13, 2005) at 4.
3. Item 4 (Security Clearance Application, dated May 30, 2003) at 2.
4. *Id.* at 3.
5. *Id.* at 4.
6. Item 3, *supra* note 2, at 1.
7. Item 5 (Statement, dated June 21, 2004) at 1.
8. *Id.*
9. *Id.* at 2.
10. *Id.*
11. Item 3, *supra* note 2, at 3.
12. Item 5, *supra* note 7, at 1.
13. *Id.* at 2.

14. Item 3, *supra* note 2, at 1.

15. Item 5, *supra* note 7, at 1.

16. *Id.* at 2.

17. 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.)