

KEYWORD: Drugs

DIGEST: Applicant has mitigated the security concern caused by his abuse of marijuana and psychedelic mushrooms while in college and for about a year thereafter. Clearance is granted.

CASE NO: 04-10404.h1

DATE: 02/14/2006

DATE: February 14, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-10404

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

A. Melvin McDonald, Esq.

SYNOPSIS

Applicant has mitigated the security concern caused by his abuse of marijuana and psychedelic mushrooms while in college and for about a year thereafter. Clearance is granted.

STATEMENT OF THE CASE

On May 13, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline H (drug involvement). Applicant submitted a sworn answer to the SOR that was received by DOHA on July 7, 2005, requested a hearing, and admitted all SOR allegations.

This case was assigned to me on August 26, 2005. A notice of hearing was issued on September 15, 2005, scheduling the hearing for October 19, 2005. The hearing was conducted as scheduled. The government submitted three documentary exhibits that were marked as Government Exhibits (GE) 1-3, and admitted into the record without objection. Applicant testified and submitted twelve documentary exhibits that were marked AE 1-12, and admitted into the record without objection. Applicant also submitted the videotaped statements of two witnesses that were played at the hearing, marked as AE 13 and AE 14, and admitted into the record without objection.⁽²⁾ The transcript was received on November 23, 2005.

PROCEDURAL MATTERS

In his response to the SOR, Applicant notified the Department of Defense that his last use of marijuana had occurred on April 30, 2005. Department Counsel moved at the hearing to amend SOR subparagraph 1.a. by striking the date *May 2004* and substituting therefore the date *April 30, 2005*. The amendment was made on the face of the SOR without objection. Applicant admitted the allegation as amended and stated he did not require additional time to respond to the amended allegation.

FINDINGS OF FACT

Applicants' admissions to the allegations in the SOR, as amended, are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 25-year-old single man who has been employed as a software engineer by a defense contractor since he graduated from college in May 2004 with a bachelor of science degree in computer science and a bachelor of arts degree in a foreign language. He worked as a student intern for the same defense contractor from May 2003 until he was hired full-time. He worked as software developer and as a tutor while attending college.

While attending college, Applicant was involved in a number of activities within the university and the surrounding community. He was a district board member of a local community service organization, and a student government representative and eventually the local student president for a professional organization for software engineers. He spent three years being a big brother through the Big Brothers/Big Sisters program and maintains contact with the youth whom he assisted in that program although he no longer lives in the same state. He was also involved in a student ministry program that is focused on providing spiritual support to college students.

Since graduating from college, Applicant has become active in the local Toastmaster's program, and has given four prepared speeches and about ten impromptu talks. He was selected by his employer to participate as a student in a municipality-sponsored leadership program. Applicant is currently taking graduate level university courses in systems engineering, and is a member of several professional societies. He devotes his free-time to hiking and biking.

Applicant experimented with marijuana on two occasions when he was approximately 15 years old. He did not use the substance again until college. While a college student, he used marijuana approximately 70 times and purchased small quantities of the substance about 10 times. He used psychedelic mushrooms about 10 times while in college and purchased a small quantity of them once. Applicant studied in a European country for a while when he was in college, and some of the uses of marijuana and mushrooms occurred in a neighboring country where the use of those substances is legal.

Applicant acknowledged his substance abuse history in a security clearance application (SF 86) he submitted in June 2003. He was questioned about his use of controlled substances in June 2004, and stated at that time:

I am essentially done with drug experimentation as my student life is over and I am beginning my career. I realize that use of drugs would be detrimental to my career and to use drugs would be a violation of trust that has been placed in me. (GE 2, pg. 6)

However, he continued to abuse marijuana until April 2005.

Finally realizing he had a drug and alcohol problem, Applicant voluntarily entered an intensive outpatient rehabilitation program on June 6, 2005. The program met three days per week from 6:00 P.M. until 9:30 P.M. He completed the program on July 15, 2005, having been diagnosed as substance dependent. His counselor noted that Applicant had "made significant progress in his understanding of his addiction and personal dynamics." AE 11

Applicant has continued to participate in a substance abuse aftercare program, and anticipates he will continue such participation until June 2006. He also has joined Alcoholics Anonymous (AA), attends six to nine meetings a week, is working the 12-step program, and has acquired a sponsor. With his sponsor, Applicant has attended weekend retreats to provide him further understanding of his addiction and the tools to control that addiction. His father is an alcoholic and has attended some AA meetings with Applicant. Applicant avoids as much as possible placing himself in situations where alcohol is being consumed, and minimizes the time he spends at functions he does attend when alcohol is being consumed. He actively uses the tools he has learned to control his addiction and maintains regular contact with his sponsor.

Applicant's substance abuse counselor provided the following observations and opinions about Applicant:

(Applicant) has really come to understand that smoking marijuana and drinking alcohol has made some damage in his life. He seems very ready to lead a life of total abstinence and work a recovery program. I've seen him become a lot more happy with himself and with the things he's doing and addressing all of his underlying issues that we all have. I think he's really had a lot of improvement since he's been in the program.

* * *

(Applicant) also has a strong sense of spirituality, which I've seen blossom a little bit in treatment here. He uses prayer and meditation and let's go of what he can't control to the process of a spiritual life with God. So that's really quite wonderful for him.

He says he occasionally journals, and all of that seems to increase his awareness of what he needs to do and what's going on [sic] his life and staying less reactionary to other people's anger or control or that kind of thing. So I've really seen (Applicant) change quite a bit since he's been in treatment. (Tr. pp. 60-62)

Likewise, Applicant's AA sponsor provided the following observations and opinions about Applicant:

From that point forward, he's embraced not only the work that he needs to do on himself, but the work the programs tells [sic] you to do in also working with others, regular meeting attendance, checking with your sponsor on a regular basis, serve others, all those activities that help us stay focused on recovery.

* * *

It's really been a great journey to take (Applicant) through these steps and watch him grow and develop, not only professionally, as far as ability to deal with addiction, but as a person, [sic] I consider (Applicant) a very good friend, and I don't use that term lightly. I find him of great character and trustworthy, and if he told you he's going to be there, he's really reliable. (Tr. p. 57)

Applicant submitted letters of recommendation from supervisors, co-workers, and people he has been involved with in his private life. Those persons attest to him being a solid citizen who has earned of reputation for being hard-working, trustworthy, honest, forthright, and reliable. Applicant's personal appearance, his manner of testifying, and the substance of his testimony confirm that he is honest, sincere, and committed to living a life of sobriety and total abstinence from drugs and alcohol.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline H, pertaining to drug involvement with its DC and MC, are most relevant in this case.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽³⁾ The government has the burden of proving controverted facts.⁽⁴⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence⁽⁵⁾, although the government is required to present substantial evidence to meet its burden of proof.⁽⁶⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁷⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁸⁾ Additionally, an

applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

No one has a right to a security clearance⁽¹⁰⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹¹⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹²⁾

CONCLUSIONS

Under Guideline H, illegal drug involvement raises questions about an individual's willingness or ability to protect classified information. Involvement with or use of an illegal drug indicates unwillingness or inability to abide by the law. Cleared employees must respect regulations whether they agree with them or not. If they do not respect the rules on illegal substances, they may not respect the rules designed to protect classified information.

Applicant has abused and purchased marijuana and psychedelic mushrooms. Disqualifying Conditions (DC) 1: *Any drug abuse*; and DC 2: *Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution* apply.

Applicant is an intelligent person who has been actively involved in community and professional organizations designed to not only enhance his professional expertise and standing, but also to serve others. With the exception of his drug and alcohol abuse, Applicant has been an outstanding member of society. Although it is only recently that he has come to grips with his addiction, he has convincingly committed himself to an aggressive treatment and aftercare program to seize control of his addiction. His counselor and sponsor provide strong evidence that Applicant is a young man who will succeed in this endeavor. Mitigating Condition (MC) 3: *A demonstrated intent not to abuse any drugs in the future* applies.

In all adjudications the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Considering all relevant and material facts and circumstances present in this case, including Applicant's character references, the observations and opinions expressed by his counselor and sponsor, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, my personal observations of this young man at the hearing, and the applicable disqualifying and mitigating conditions, I find Applicant has overcome the case against him and satisfied his ultimate burden of persuasion. Guideline H is decided for Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline H: 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 is granted.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. The complete testimony of the two witnesses appearing in the videotaped statements has been transcribed into the transcript at pages 55-62.
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
5. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
6. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
7. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
8. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
9. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
10. *Egan*, 484 U.S. at 528, 531.
11. *Id* at 531.
12. *Egan*, Executive Order 10865, and the Directive.