

KEYWORD: Drugs

DIGEST: Applicant is a 28-year-old systems analyst for a defense contractor. While in high school and college, and shortly thereafter, Applicant abused illegal drugs, including marijuana, cocaine, and LSD. On one occasion in about March 1998, Applicant's wrongful use of marijuana resulted in a criminal charge for possession of drug abuse paraphernalia. He completed a drug education course and abstained for about one year, but resumed using illegal drugs. Applicant smoked marijuana once after submitting his security clearance application. Since then, he has remained drug-free and has excelled at his job. Although Applicant shows promise, at this time he has failed to mitigate the security concerns arising from his long history of drug involvement. Clearance is denied.

CASENO: 04-10685.h1

DATE: 03/20/2006

DATE: March 20, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-10685

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL J. BRESLIN**

**APPEARANCES**

## **FOR GOVERNMENT**

Sabrina Redd, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

## **SYNOPSIS**

Applicant is a 28-year-old systems analyst for a defense contractor. While in high school and college, and shortly thereafter, Applicant abused illegal drugs, including marijuana, cocaine, and LSD. On one occasion in about March 1998, Applicant's wrongful use of marijuana resulted in a criminal charge for possession of drug abuse paraphernalia. He completed a drug education course and abstained for about one year, but resumed using illegal drugs. Applicant smoked marijuana once after submitting his security clearance application. Since then, he has remained drug-free and has excelled at his job. Although Applicant shows promise, at this time he has failed to mitigate the security concerns arising from his long history of drug involvement. Clearance is denied.

## **STATEMENT OF THE CASE**

On August 27, 2003, Applicant submitted a security clearance application. The Defense Office of Hearings and Appeals (DOHA) declined to grant a security clearance for Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive"). On March 28, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleged security concerns raised under the Directive, specifically Guideline H, Drug Involvement.

Applicant answered the SOR in writing on April 11, 2005. He elected to have a hearing before an administrative judge.

I received the case assignment on August 1, 2005. With the concurrence of Applicant and Department Counsel, I convened the hearing on December 14, 2005. The government introduced Exhibits 1 through 3. Applicant presented Exhibits A through C and testified on his own behalf. DOHA received the final transcript (Tr.) of the hearing on

December 28, 2005.

### **FINDINGS OF FACT**

Applicant admitted the factual allegations in ¶¶ 1.a, 1.d, and 1.e of the SOR, with explanations. Applicant's Answer to SOR, dated April 11, 2005. Those admissions are incorporated herein as findings of fact. He denied the allegations in ¶¶ 1.b and 1.c of the SOR. (*Id.*) After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant is 28 years old. (Ex. 1 at 1.) He works as a systems analyst for a defense contractor, doing computer modeling and simulation. (Tr. at 31.)

Applicant began using lysergic acid diethylamide (LSD) in about September 1994, when he was 16 years old. (Ex. 3 at 2; Tr. at 20.) He bought the drug on a few occasions, and used it socially. (Ex. 3 at 2.) He continued using LSD until about August 1997. (*Id.*)

He began using marijuana while in high school, beginning in about September 1995. (Ex. 3 at 1.) He purchased it numerous times and smoked marijuana about once a month in social situations. (*Id.*)

In September 1996, Applicant began attending college. He majored in decision and information sciences. (Tr. at 35.)

Applicant began using cocaine in about February 1998. (Ex.3 at 1.) He used it about 20 times until about January 2001. (Tr. at 17.) Applicant denies ever buying or selling the drug, but admits he may have contributed money toward the purchase of cocaine on one occasion.

In about March 1998, Applicant and a friend took some time off and drove to a southern state for spring break. (Ex. 3 at 2.) On the way home, they visited a friend at another college campus. In the dormitory, Applicant smoked some marijuana using a metal tube shaped like a cigarette, paraphernalia he had brought with him. (Tr. at 35-36.) The dorm resident advisor alerted the police, who issued Applicant a citation for possession of drug abuse paraphernalia.

Applicant appeared in court and arranged an alternate disposition of the charge. He completed a drug education program at his school and went to a number of meetings of Narcotics Anonymous. His arrest record was expunged. Applicant abstained from further drug use until about late 1999. (Tr. at 37.)

Applicant was graduated from college in December 2000. (Ex. 1 at 2.) Over the following years he worked as an information manager, a technical marketing specialist, and a bartender. (Ex. 1 at 2.)

In August 2003, Applicant began working as a systems analyst for his present employer, a defense contractor, and submitted a security clearance application. (Ex. 1 at 1.) He properly reported the criminal charge for possession of paraphernalia, and his use of marijuana, cocaine, and LSD.

On February 4, 2004, a security investigator questioned Applicant about his drug use. Applicant admitted the extent of his use of illegal drugs. Applicant wrote "I never plan, nor do I have a desire to ever do LSD or cocaine again. I will most likely not use marijuana again but it is possible." (Ex. 3 at 2.) He admitted his use of marijuana continued until about January 2004. (Ex. 3 at 1.) He later asserted he did not use marijuana after submitting his security clearance application except on one occasion: New Year's Eve, January 2004. (Tr. at 21.)

Applicant's supervisor and manager praise his dedication, abilities and professionalism. They trust him, and consider him an indispensable part of their organization. (Exs. A, B.) On cross-examination by department counsel, Applicant indicated his supervisor is not aware of the details of why Applicant's security clearance was in issue. (Tr. at 33.)

## **POLICIES**

The President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." (*Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

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. (Directive, ¶ E2.A8.1.1.1.)

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

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." (Directive, ¶ E2.2.1.) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. (*Id.*) An administrative judge should consider the following factors: (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. (*Id.*)

Initially, the government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, ¶ E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, ¶ E3.1.15.) An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).) "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." (Directive, ¶ E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. 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. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, § 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## **CONCLUSIONS**

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Under the Directive, ¶ E2.A8.1.2.1, any drug abuse could raise a security concern. The Directive defines "drug abuse" as "the illegal use of a drug or the use of a legal drug in a manner that deviates from approved medical direction." (Directive, ¶ E2.A8.1.1.3.) The evidence shows Applicant wrongfully consumed numerous illegal drugs on multiple occasions between 1994 and January 2004. This potentially disqualifying condition applies.

Paragraph E2.A8.1.2.2 of the Directive provides that "illegal drug possession, including ... purchase, sale or distribution" may be disqualifying. Applicant illegally purchased marijuana and LSD on numerous occasions. (Ex. 3 at 1-2.) I find this potentially disqualifying condition applies.

It is possible to mitigate the security concerns that arise from drug involvement. Under the Directive, ¶ E2.A8.1.3.1, it may be mitigating where, "[t]he drug involvement was not recent." The Directive does not define the term "recent." The determination of recency depends upon all the relevant circumstances of each case. In this case, Applicant routinely used and possessed marijuana from age 16 until age 26 (between 1994 and January 2004). Applicant discontinued his regular use of marijuana before accepting employment with the DoD contractor, but smoked marijuana once at a New Year's party in January 2004, after submitting a security clearance application. He has remained drug-free for two years since then. The two years of abstinence is relatively short, compared to the history of about ten years of frequent drug abuse. This is especially true in light of his equivocal statement about future drug use. I conclude Applicant's drug involvement was recent, therefore this mitigating condition does not apply.

Paragraph E2.A8.1.3.2 indicates that it may be mitigating where the drug involvement "was an isolated or aberrational event." The available evidence shows Applicant abused drugs on numerous occasions spanning many years, therefore I find this potentially mitigating condition does not apply.

"A demonstrated intent not to abuse drugs in the future" may also be mitigating. (Directive, ¶ E2.A8.1.3.3.) The evidence indicates Applicant frequently used serious drugs for many years. He completed a drug education program and abstained from using illegal drugs for about one year, but then relapsed. When interviewed by a security investigator in February 2004, he indicated it was possible he would use marijuana in the future. Weighing all the evidence, Applicant has not convinced me that this potentially mitigating condition applies.

Finally, the Directive, ¶ E2.A8.1.3.4, provides that it may be mitigating where the evidence demonstrated "[s]atisfactory 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." It is not clear whether Applicant's drug education program qualified as a "drug treatment program" under the Directive. In any event, although Applicant completed the program, he resumed using illegal drugs. I conclude this mitigating condition does not apply.

I balanced the potentially disqualifying and mitigating conditions in light of the "whole person" concept. Applicant is a young man who entered the professional workforce about three years ago and has performed exceptionally well. Applicant has a long history of serious drug abuse, which raises substantial security concerns. He continued to use drugs even after his drug use resulted in a criminal citation, he was required to undergo drug abuse education, and he submitted a security clearance application. To his credit, he has remained drug-free for two years. Although Applicant shows great promise, it is too early for me to be convinced that his history of drug abuse will not raise security concerns in the future. I conclude Applicant has not mitigated the security concerns arising from his drug involvement at this time.

### **FORMAL FINDINGS**

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline H: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

### **DECISION**

In light of all of 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.

Michael J. Breslin  
Administrative Judge