

KEYWORD: Drugs

DIGEST: Applicant is 32 years old and has worked for a defense contractor as a manufacturing engineer since graduating from college in 1996. Security concerns were raised by his use of marijuana from January 1997 to December 2002, during which time he held a clearance. Applicant successfully mitigated the security concerns by demonstrating his marijuana involvement was a relatively minor aspect of his life, and he has shown a genuine commitment to not use drugs in the future. Clearance is granted.

CASE NO: 04-12335.h1

DATE: 02/15/2006

DATE: February 15, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-12335

DECISION OF ADMINISTRATIVE JUDGE

DAVID S. BRUCE

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 32 years old and has worked for a defense contractor as a manufacturing engineer since graduating from college in 1996. Security concerns were raised by his use of marijuana from January 1997 to December 2002, during which time he held a clearance. Applicant successfully mitigated the security concerns by demonstrating his marijuana involvement was a relatively minor aspect of his life, and he has shown a genuine commitment to not use drugs in the future. Clearance is granted.

STATEMENT OF THE CASE

On March 18, 2005, the Defense Office of Hearings and Appeals (DOHA), 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 Review Program*, dated January 2, 1992, as amended and modified (Directive), issued a Statement of Reasons (SOR) to Applicant alleging facts that raise security concerns addressed in the Directive under Guideline H - Drug Involvement. The SOR detailed why DOHA could not preliminarily determine under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's request for a security clearance. By his answer to the SOR dated April 23, 2005, Applicant admitted the allegations of subparagraphs 1.a. and 1.b., and requested a hearing before an administrative judge.

The case was assigned to me on October 12, 2005, and I conducted the hearing on December 6, 2005. The government submitted exhibits (GE) 1 and 2, and Applicant testified and offered exhibits (AE) A through D. All exhibits were admitted without objections. I left the record open until December 16, 2005, to allow Applicant an opportunity to submit certain other documents to support his position in the case. [\(1\)](#) Applicant timely submitted two documents identified as Applicant's exhibits (AE) E and F, that have been admitted without objection from Department Counsel. DOHA received the hearing transcript (Tr.) on December 16, 2005.

FINDINGS OF FACT

Applicant's admissions to the allegations of the SOR are incorporated herein by reference. In addition, after a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact:

Applicant is 32 years old, has never been married, and has no children. He obtained a five-year Bachelor of Science degree in mechanical engineering in June 1996.⁽²⁾ He has been accepted in a Master of Business Administration program at a major university and is presently enrolled in his first course.⁽³⁾ He has not served in the military and has never been arrested for any reason.⁽⁴⁾

Applicant has been employed as a manufacturing engineer by the same defense contractor since graduating from college.⁽⁵⁾ He has held a clearance since 1997.⁽⁶⁾ His clearance is necessary on a daily basis for him to perform his job in assembling airborne radar systems and related functions.⁽⁷⁾ He has not had any security violations while employed by the contractor.⁽⁸⁾ He is highly regarded by his supervisors and is considered reliable, trustworthy, and dependable, and an outstanding employee.⁽⁹⁾ In February 2005, he received a President's Leadership Award from his employer recognizing his significant accomplishments and contributions to the company.⁽¹⁰⁾

Applicant admits using marijuana socially from January 1997 to at least December 31, 2002. His involvement was principally connected to friends he had from college and to a long distance relationship he later had with a woman during the period who he no longer sees.⁽¹¹⁾ He does not live in the metropolitan area where they reside, and he has essentially separated himself from that aspect of his past personal life.⁽¹²⁾ He did not buy or sell drugs in any way during the period, and he never used or was ever under the influence of marijuana at work. He has never undergone treatment or counseling for drug abuse in any form.⁽¹³⁾

He further acknowledges and admits he smoked marijuana at times after he was granted a security clearance, and he realized that drug use by individuals was a legitimate governmental security concern when he was originally granted his clearance.⁽¹⁴⁾ Applicant completed his Security Clearance Application (SF 86) on August 12, 2003. In response to Question 27 concerning his use of illegal drugs, he admitted his use of marijuana essentially as set for above.⁽¹⁵⁾

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines For Determining Eligibility For Access To Classified Information*, sets forth the criteria which must be evaluated when determining security clearance eligibility. The adjudicative guidelines specifically distinguish between those factors that are considered in denying or revoking an employee's request for access to classified information (Disqualifying Conditions), together with those factors that are considered in granting an employee's request for access to classified information (Mitigating Conditions). By acknowledging that individual circumstances of each case are always different, the guidelines provide substantive standards to assist an administrative judge in reaching fair and impartial common sense decisions.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at well-informed decisions. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the conduct of the applicant and the circumstances in any case, the factors an administrative judge should consider pursuant to the concept 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 the 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.

Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interests of national security. Granting an applicant's clearance for access to classified information is predicated on a high degree of trust and confidence in the individual. Accordingly,

decisions under the Directive must include consideration of not just the *actual* risk of disclosure of such information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information in any aspect of his or her life. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information.⁽¹⁶⁾ The decision to deny a security clearance request to an individual is not necessarily a determination of the loyalty of the applicant.⁽¹⁷⁾ It is merely an indication the applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

In accordance with the Directive, the government bears the burden of proof in the adjudicative process to first establish conditions by substantial evidence which indicate it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information.⁽¹⁸⁾ The legal standard for the burden of proof is something less than a preponderance of the evidence.⁽¹⁹⁾ When the government meets this burden, the corresponding heavy burden of rebuttal then falls on the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the position of the government, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.⁽²⁰⁾

Upon consideration of all the evidence submitted in this matter, the following adjudicative guideline is appropriate for evaluation with regard to the facts of this case:

Guideline H - Drug Involvement is a security concern because 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.

CONCLUSIONS

I have thoroughly considered all the facts in evidence in this case and the legal standards required by the Directive. The government has established its case for disqualification under Guideline H - Drug Involvement.

Considering all the evidence, Drug Involvement Disqualifying Conditions (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*) apply in this case. Drug abuse is defined in 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*).

Applicant admits conduct constituting drug abuse under with the Directive. He intermittently used marijuana starting in January 1997, and his most recent use of marijuana was in late December 2002. Of particular concern is that Applicant used marijuana after he was issued a security clearance, knowing full well the use of illegal drugs is a serious security concern regarding anyone having access to classified information. He chose not to seek professional assistance or counseling for his benefit, and continued using the drug for a considerable time. His conduct constituted a serious disregard and lack of respect for the critical rules and regulations related to his employment by a major defense contractor. The government's evidence and Applicant's admissions constitute substantial evidence of disqualifying conditions under Guideline H.

I have considered all the mitigating conditions, and particularly Drug Involvement Mitigating Condition (DI MC) E2.A8.1.3.1. (*The drug involvement was not recent*), and DI MC E2.A8.1.3.3. (*A demonstrated intent not to abuse any drugs in the future*), and conclude both apply.

Applicant's use of marijuana commenced about seven months after he graduated from college. It continued intermittently for about five years. The description of his use depicts a social user only, usually at parties, typically inspired by peer pressure. He estimates having used the drug in this setting about 20 times during the period.⁽²¹⁾ He also laments, in hindsight, that depression caused by the unexpected death of his mother in January 2000 likely contributed to his interest in its use.⁽²²⁾ His last use was in late December 2002. Taken in perspective, marijuana use has been a relatively minor aspect of Applicant's life, and it has not otherwise inhibited his ability to be successful in his academic and occupational pursuits. He has not used marijuana in three years, and in the context of this case, I consider it not recent.

Applicant was forthright when he completed his SF 86 application by disclosing his past marijuana use. He was similarly forthright in his subsequent interview with a DSS Special Agent, and his testimony at the hearing was consistent with his past disclosures. He has been openly candid concerning his mistakes and his understanding that his drug use was wrong, particularly during a time he held a clearance. He offered no excuses to justify his conduct in any way, and I find his presentation credible.

Applicant has never been charged with any drug or alcohol-related offense. He did not use marijuana at work, nor did he ever go to his job when under the influence of the drug. Applicant has not violated the conditions of his security clearance for the lengthy time he has been working for the same contractor. His job performance and contributions to his company are exemplary, and he is considered responsible and trustworthy. He began his employment just seven months out of college. He admits without reservation he did not realize the significance and mature responsibilities associated with holding a clearance. He did not have the benefit of military service to offset his immaturity at the time. The risk of losing his clearance and potentially his job has been an extremely stressful and life-altering experience for him.⁽²³⁾ I believe he now understands and appreciates the dynamic contrast between youthful indiscretions and the serious implications of holding a clearance when working daily on matters of national security. His understanding demonstrates insight into his life in the future as a responsible adult, and his genuine commitment to not use drugs again.

I have considered all the evidence including Applicant's credibility and demeanor. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting national interests. Applicant's loyalty to the United States is not in question. The government's primary concern is whether or not Applicant may resume using illegal drugs in the future, thereby increasing the risk of an unauthorized disclosure of classified information. To the contrary, Applicant has shown he is a valued and trusted employee of his company with a bright future, and he has demonstrated a genuine personal commitment to remain drug free. I am persuaded by the totality of the evidence that it is clearly consistent with the national interest to grant Applicant a clearance. For the reasons stated, Applicant has fully mitigated the security concerns regarding his drug involvement. Accordingly, Guideline H raised by the government is decided for Applicant.

FORMAL FINDINGS

In accordance with Section E3.1.25 of Enclosure 3 of the Directive, the following are the formal findings as to each allegation in the SOR:

Paragraph 1. Drug Involvement (Guideline H) FOR THE APPLICANT

Subparagraph 1.a. For the Applicant Subparagraph 1 b. For the 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.

David S. Bruce

Administrative Judge

1. Tr. at 57.

2. GE 1 (Applicant's Security Clearance Application (SF 86) dated July 21, 2003), at 1 and 3.

3. AE D (Acceptance letter into MBA program). See also Tr. at 24.
4. GE 1, *supra* note 2, at 4 and 5.
5. *Id.* at 2. and Tr. at 21.
6. *Id.* at 6. and Tr. at 22.
7. Tr at 19 and 22.
8. AE B (Employer Security Office letter dated April 21, 2005).
9. AE A (Employer Internal Memorandum dated April 18, 2005). See also AE C and AE F (Employer Performance Appraisals from January 2001 to January 2003).
10. AE E (Employer Internal Memorandum dated February 11, 2005).
11. Tr. at 34-36.
12. *Id.* at 15-17.
13. *Id.* at 18. See also GE 2 (Applicant's sworn statement to a Defense Security Service Special Agent dated November 19, 2003) at 2 and 3.
14. Tr. at 44-45.
15. GE 1, *supra* note 2, at 6.
16. Directive, Enclosure 2, Para. E2.2.2.
17. Executive Order 10865 § 7.
18. ISCR Case No. 96-0277 (July 11, 1007) at p. 2.
19. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
20. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Para. E3.1.15.
21. GE 2, *supra* note 13, at 2.
22. Tr. at 15.
23. Tr. at 19.