

KEYWORD: Drugs; Personal Conduct; Criminal Conduct

DIGEST: Applicant wilfully misrepresented her marijuana use on clearance applications in 1989, February 1997 and July 2003, rendering her an unsuitable candidate for access to classified information. She also used marijuana while holding a clearance and has not demonstrated the required intent to refrain from drug use in the future. Clearance denied.

CASE NO: 04-12549.h1

DATE: 05/11/2006

DATE: May 11, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-12549

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR.

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esquire, Department Counsel

Francisco J. Mendez, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant wilfully misrepresented her marijuana use on clearance applications in 1989, February 1997 and July 2003, rendering her an unsuitable candidate for access to classified information. She also used marijuana while holding a clearance and has not demonstrated the required intent to refrain from drug use in the future. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 20 July 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of her clearance because of drug involvement, personal conduct, and criminal conduct. ⁽¹⁾ She answered the SOR 8 August 2005, and requested a hearing. DOHA assigned the case to me 28 September 2004 and I heard it 17 October 2005. DOHA received the transcript 28 October 2005.

FINDINGS OF FACT

Applicant admitted buying marijuana (1.b.) and deliberately falsifying two clearance applications (2.b., 2.e., and 3.a.). She denied the remaining allegations of the SOR. Accordingly I incorporate her admissions as findings of fact. She is a 47-year-old custom evaluation analyst employed by a defense contractor since June 2004. ⁽²⁾ She has held an industrial clearance since approximately 1989.

Applicant used marijuana at varying frequency from 1978 to fall 2004. Her period of "regular" marijuana use⁽³⁾ was between 1978 and the early 1990s. She used marijuana sporadically since then until fall 2004.⁽⁴⁾ Early in her marijuana use, she purchased small amounts for her personal use or contributed to purchases for use in a group.⁽⁵⁾

When Applicant first applied for a clearance in 1989, she deliberately failed to disclose her drug use as required by the application (2.g.). She did so because she feared she would not get her clearance, and because she might lose her job. When she applied for an upgrade in access in February 1997, she deliberately failed to disclose her use of marijuana within the last seven years (2.d.) and her use of marijuana after being granted a clearance (2.e.). She did so because she feared both the effect of her drug use on her clearance and the effect of disclosing her past falsification on her clearance. She also failed to disclose her marijuana purchases (2.f.) because she had never been involved in any purchases for profit and because her purchases fell outside the 7-year window asked by the question. When Applicant completed a clearance application for her periodic reinvestigation in July 2003, she deliberately failed to disclose her use of marijuana within the last seven years (2.a.) and her use of marijuana after being granted a clearance (2.b.). She did so because she feared the effect of disclosing her past falsifications on her clearance. She also failed to disclose her marijuana purchases (2.c.) because she had never been involved in any purchases for profit and because her purchases fell outside the 7-year window asked by the question.

Applicant's falsifications over the years began to weigh on her. When she was interviewed for her clearance in December 2003, the agent went through her application asking for corrections or changes to her answers. When the agent got to the drug questions (27-29), Applicant revealed the truth about her drug history.

Applicant has acknowledged that she was aware that her marijuana use was unlawful, contrary to government policy, and contrary to her employers' policies. She does not believe that her marijuana use ever put classified information at risk. Nevertheless, she has stated her intent to refrain from drug use in the future in order to retain her clearance.

Applicant's character references uniformly praise her honesty and integrity. However, only one reference appears to be fully aware of Applicant's misconduct. A few more describe their awareness of Applicant's "mistakes." Most do not appear to be aware of any of the issues in the SOR.

POLICIES AND BURDEN OF PROOF

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and

impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline H (Drug Involvement), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁽⁶⁾

CONCLUSIONS

The government established a Guideline H⁽⁷⁾ case and Applicant did not mitigate the security concerns. Although her last marijuana use was in fall 2004, her drug use while cleared raises particular concerns about her suitability for a clearance.⁽⁸⁾

Further, Applicant meets none of the mitigating conditions for drug involvement. Her drug use is recent.⁽⁹⁾ It is not isolated or aberrational.⁽¹⁰⁾ While she now vows to remain drug free that vow is directly connected to retaining her clearance, and is undercut by her use of marijuana in fall 2004--after her most recent clearance application and subject interview. Consequently, she has failed to demonstrate intent to refrain from drug abuse in the future.⁽¹¹⁾ Accordingly, I conclude Guideline H against Applicant.

The government also established a Guideline E case and Applicant did not mitigate the conduct. She deliberately misrepresented her drug history on three clearance applications over fourteen years.⁽¹²⁾ She did so to first obtain, then

retain, her clearance. Her conduct demonstrates a lack of candor required of cleared personnel. The government has an interest in examining all relevant and material adverse information about an Applicant before making a clearance decision. The government relies on applicants to truthfully disclose that adverse information. Further, an applicant's willingness to report adverse information about herself provides some indication of her willingness to report inadvertent security violations or other security concerns in the future, something the government relies on in order to perform damage assessments and limit the compromise of classified information. Applicant's conduct suggests she is willing to put her personal needs ahead of legitimate government interests.

None of the Guideline E mitigating conditions apply. The concealed information was relevant to a clearance decision. (13) The falsifications were not isolated, they were recent, although the Applicant did eventually provide the correct information voluntarily. (14) And while she did disclose her drug use before being confronted with it, that disclosure cannot be considered either prompt or good faith within the meaning of the guideline, given the passage of more than four months from the last falsified clearance application and her December 2003 subject interview. (15) There is no evidence suggesting Applicant received bad advice about what she was required to disclose on her clearance application. (16) However, I conclude that she did not falsify her 1997 and 2003 applications when she failed to disclose her drug purchases, both because she never did so for profit and because the purchases occurred outside the 7-year window required by the question. Nevertheless, I resolve Guideline E against Applicant.

The government established a Guideline J case, and the Applicant did not mitigate the security concerns. Her multiple falsifications on her clearance applications violated 18 U.S.C. §1001. (17) None of the Guideline J mitigating factors apply. Her conduct is recent, (18) not isolated, (19) and there is little evidence of successful rehabilitation. (20) Accordingly, I conclude Guideline J against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline H: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: For Applicant

Subparagraph c: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: For Applicant

Subparagraph d: Against Applicant

Subparagraph e: Against Applicant

Subparagraph f: For Applicant

Subparagraph g: Against Applicant

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph a: Against 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 denied.

John G. Metz, Jr.
Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. Applicant changed employers between her July 2003 clearance application and the hearing.
3. Defined by Applicant as more than three times per year. She said some years she used as many as 4-5 times per year, some years not at all.
4. Her last use occurred after her most recent clearance application (July 2003) and subject interview (December 2003).
5. Never more than \$25.00.
6. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
7. E2.A8.1.2.1. Any drug abuse; E2.A8.1.2.2. Illegal drug possession, including . . .purchase. . .;
8. E2.A8.1.2.5.... Recent drug involvement, especially following the granting of a security clearance, . . will almost invariably result in an unfavorable determination.
9. E2.A8.1.3.1. The drug involvement was not recent;
10. E2.A8.1.3.2. The drug involvement was an isolated or aberrational event;
11. E2.A8.1.3.3. A demonstrated intent not to abuse any drugs in the future;
12. E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . .;
13. E2.A5.1.3.1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability;
14. E2.A5.1.3.2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;
15. E2.A5.1.3.3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts;
16. E2.A5.1.3.4. Omission of material facts was caused or significantly contributed by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided;
17. E2.A10.1.2.1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged; E2.A10.1.2.2. A single serious crime or multiple lesser offenses.
18. E2.A10.1.3.1. The criminal behavior was not recent.
19. E2.A10.1.3.2. The crime was an isolated incident.
20. E2.A10.1.3.6. There is clear evidence of successful rehabilitation.