

KEYWORD: Drugs; Criminal Conduct

DIGEST: Twenty-six-year old Applicant illegally purchased and used marijuana a couple of times per week in at least June 2003, one month after completing his application for a security clearance. In June 2003, he was arrested and charged with (1) possession of marijuana, (2) possession/distribution of controlled paraphernalia, and (3) defective equipment generally. He was convicted of counts (1) and (3), and count (2) was dismissed. The timing of his substance abuse reflects a high degree of questionable judgment, irresponsibility, and immature behavior, and raises doubts about his security eligibility and suitability. In the absence of a longer period of confirmed continuing abstinence, his vows to abstain, in light of his past conduct, do not constitute a "demonstrated intent" not to abuse any drugs in the future. Clearance is denied.

CASENO: 05-00727.h1

DATE: 03/20/2006

DATE: March 20, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-00727

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Twenty-six-year old Applicant illegally purchased and used marijuana a couple of times per week in at least June 2003, one month after completing his application for a security clearance. In June 2003, he was arrested and charged with (1) possession of marijuana, (2) possession/distribution of controlled paraphernalia, and (3) defective equipment generally. He was convicted of counts (1) and (3), and count (2) was dismissed. The timing of his substance abuse reflects a high degree of questionable judgment, irresponsibility, and immature behavior, and raises doubts about his security eligibility and suitability. In the absence of a longer period of confirmed continuing abstinence, his vows to abstain, in light of his past conduct, do not constitute a "demonstrated intent" not to abuse any drugs in the future. Clearance is denied.

STATEMENT OF THE CASE

On August 12, 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 J (criminal 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 statement, dated August 31, 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 20, 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. No such

submission was made by the February 23, 2006, deadline. The case was assigned to me on March 17, 2006.

FINDINGS OF FACT

Applicant admitted all of the factual allegations pertaining to drug involvement under Guideline H (subparagraphs 1.a. through 1.c.). Those admissions are incorporated herein as findings of fact. He denied one of the factual allegations pertaining to criminal conduct under Guideline J (subparagraph 2.b.), but offered an explanation which, in fact, admitted the allegation. He did not address the remaining allegation (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 26-year-old employee of a defense contractor, and he is seeking to obtain a security clearance, the level of which has not been divulged. He has been employed by the same company since September 2001, with the exception of a three month period during December 2001 to March 2003, when he was unemployed, and currently serves as a mail room clerk. (2) The quality of his work performance has not been provided.

In March 2000, when he was 20 years old, Applicant picked up a couple of friends and shortly thereafter, was stopped by the police. The police officer asked him about some beer under his seat, and replied the beer was his friends' and they had stolen it. His friends denied the beer belonged to them. He was cited and charged with minor in possession of alcohol. Although he pled not guilty, he was found guilty and fined \$500.00, and his operator's license was suspended for six months. (3)

Applicant completed a security clearance application (SF 86) on May 19, 2003. (4) In it, he indicated he had not used any controlled substances, including marijuana, in the last seven years. (5)

Motivated by peer pressure and a desire to experiment, Applicant abused marijuana a couple of times per week in at least June 2003. He had previously purchased the marijuana for \$10.00 per bag from a dealer/friend of his. (6) It remains unclear when Applicant actually started using marijuana or if he started doing so in June 2003, for he merely claims it started after he had completed the SF 86. The presence of the scale in the car at the time he was stopped would seem to indicate possibly more extensive use than merely in June 2003, but there is no evidence directly on point.

In June 2003, Applicant was pulled over by the police for operating a vehicle with defective equipment. The police

officer smelled the odor of marijuana coming from the car and searched it and Applicant. The search uncovered a small baggie of marijuana on Applicant and a scale. He was arrested and charged with (1) possession of marijuana, (2) possession/distribution of controlled paraphernalia, and (3) defective equipment generally. Applicant was found guilty of charges (1) and (3), and count (2) was dismissed. He was fined \$165.00, ordered to perform 24 hours of community service, ordered to attend Narcotics Anonymous (NA) and Alcoholics Anonymous (AA), and his operator's license was suspended for six months.⁽⁷⁾ Applicant complied with the court orders and attended 10 NA classes and an unspecified number of AA classes, as assigned by his probation officer.⁽⁸⁾

In December 2003, upon being interviewed by a special agent of the Defense Security Service (DSS), Applicant acknowledged his marijuana use and claimed he had abstained for the past six months. He stated he has no intention "in looking back with drugs."⁽⁹⁾

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 set forth 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:

Drug Involvement--Guideline H: 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.

Criminal Conduct--Guideline J: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

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

Since 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,"⁽¹⁰⁾ or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I conclude that all of the standards are one and the same. In reaching this Decision, I draw only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I avoid drawing inferences that are 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, that 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 that 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 that 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 that 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 that 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 that 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 consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

The government has established its case under Guideline H. Applicant's illegal purchase and use of marijuana in at least June 2003 is of concern, especially in light of his desire to have access to the nation's secrets. Marijuana use was, and remains, against the law, DoD policy, and his corporate policy. 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.A8.1.1.2.1. generally identifies and defines drugs, as follows (*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's overall conduct pertaining to his illegal substance abuse, including his purchase and use of marijuana, clearly falls within Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1. (*any drug abuse*) and E2.A8.1.2.2. (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*).

In examining Applicant's conduct under the "whole person concept," it is clear that his participation in the marijuana abuse was knowledgeable and voluntary. He was motivated by peer pressure and a desire to experiment. And he purchased the marijuana from a dealer/friend. What remains unclear is why Applicant chose to use marijuana after he had completed the SF 86 in anticipation of obtaining a security clearance. The timing of those actions reflect a high degree of questionable judgment, irresponsibility, and immature behavior. He placed his own pleasures above his would-be fiduciary responsibilities as a holder of a security clearance.

It might be argued his marijuana involvement 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 use in at least June 2003 to be recent.

There is little evidence regarding the full extent of Applicant's marijuana abuse for the record is silent as to when such use first commenced, except Applicant's contention that it started after he completed the SF 86 in May 2003. Nevertheless, Applicant's occasional use (a couple of times per week) of marijuana in at least June 2003 removes his actions from the application of DI MC E2.A8.1.3.2. (*the drug involvement was an isolated or aberrational event*).

Applicant asserts he has abstained from marijuana since his arrest in June 2003. However, based on the record evidence, I possess little confidence that Applicant's overall substance abuse is a thing of the past that will not recur. In the absence of a longer current period of abstinence, his indication of an intent not to abuse any drugs in the future 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 J. Although Applicant's conduct was predominately drug-related, with one alcohol-related incident, it was also criminal, and in this regard also falls within Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1. (*allegations or admissions of criminal conduct, regardless of whether the person was formally charged*) and CC DC E2.A10.1.2.2. (*a single serious crime or multiple lesser offenses*). His two incidents negate the potential application of Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.3.2. (*the crime was an isolated incident*). As the most recent incident occurred in June 2003, CC MC E2.A10.1.3.1. (*the criminal behavior was not recent*) does not apply. Furthermore, as it pertains to the alcohol-related incident, I concur in Department Counsel's observation that Applicant's explanation is implausible for it appears the beer was his or he was aware it had been stolen by his friends--inconsistent explanations to the police--neither of which helps his case. Consequently, I conclude that Applicant has failed to mitigate or overcome the government's case under Guideline J. Accordingly, allegations 2.a. and 2.b. of the SOR are concluded against 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 J: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: 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 is denied.

Robert Robinson Gales

Chief Administrative Judge

1. The government submitted five items in support of its contentions.

2. Item 4 (Security Clearance Application, dated May 19, 2003) at 2.
3. Item 5 (Statement, dated December 10, 2003) at 1.
4. Item 4.
5. Questions 27 and 29, *id.* at 7.
6. Item 5, *supra* note 3, at 3.
7. *Id.*
8. Item 2 (Response to SOR, dated August 31, 2005).
9. Item 5, *supra* note 3, at 3.
10. 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.).