

KEYWORD: Personal Conduct; Drugs; Criminal Conduct

DIGEST: Applicant bought and used marijuana 10-15 times from fall 1999 to fall 2003. He experimented with ecstasy, LSD, and hallucinogenic mushrooms several times each between 2000 and 2002. He falsified his January 2004 clearance application by wilfully concealing this drug history. Clearance denied.

CASE NO: 05-01331.h1

DATE:06/20/2006

DATE: June 20, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-01331

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN GRATTAN METZ, JR**

**APPEARANCES**

**FOR GOVERNMENT**

Jason Perry, Esquire, Department Counsel

## **FOR APPLICANT**

James R. Klimaski, Esquire

### **SYNOPSIS**

Applicant bought and used marijuana 10-15 times from fall 1999 to fall 2003. He experimented with ecstasy, LSD, and hallucinogenic mushrooms several times each between 2000 and 2002. He falsified his January 2004 clearance application by wilfully concealing this drug history. Clearance denied.

### **STATEMENT OF THE CASE**

Applicant challenges the 20 September 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of personal conduct, drug involvement, and criminal conduct. <sup>(1)</sup> He answered the SOR 25 October 2005, and requested a hearing. DOHA assigned the case to me 14 February 2006, and I heard it 23 March 2006. DOHA received the transcript 29 March 2006.

### **FINDINGS OF FACT**

Applicant admitted the allegations of the SOR. Accordingly, I incorporate his admissions as findings of fact. He is a 24-year-old assistant computer network administrator employed by a defense contractor since December 2003. He has never applied for a clearance before.

When Applicant applied for a clearance in January 2004, he deliberately concealed his drug abuse and drug purchases between fall 1999 and fall 2003 (question 27). During a Defense Security Service interview in October 2004, he admitted deliberately omitting his drug abuse because he 1) wanted to believe the question was aimed at heavy, regular, use; 2) was ashamed of his drug use because he knew it was illegal and dangerous; and, 3) was afraid he would not obtain his clearance.

Applicant began using marijuana in fall 1999, during his senior year in high school. He continued to use marijuana during college until fall 2003, when he stopped because he was starting to look for post-graduation employment and was concerned both about the legal and health consequences of his drug use. Between 2000 and 2002, he experimented with ecstasy and LSD twice each and with hallucinogenic mushrooms about four times. He says he intends to remain drug-free.

Applicant disclosed his drug abuse history during an October 2004 interview with the Defense Security Service. As the agent went over Applicant's clearance application, asking Applicant for confirmation or correction of the answers, Applicant disclosed his drug use when he got to question 27. Applicant did not disclose his drug abuse history to his employer, or seek to correct his clearance application, before the October 2004 interview. He was aware he could contact the government through his company facility security officer.

Applicant interviewed with his current employer in late fall 2003, while he was still in college, was hired in late December 2003, and applied for his clearance in mid-January 2004. He expected to graduate from college in January 2005. Applicant's supervisor, who participated in the company interviews of Applicant in late 2003, considers him a reliable, honest, and trustworthy employee. However, he did not know the issues concerning Applicant's clearance, and at the hearing was told only "he failed to list that he used drugs while he was in college." (Tr. 18). This fact did not change his opinion of Applicant.

### **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 E (Personal Conduct), Guideline H (Drug Involvement), 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. (2)

## CONCLUSIONS

The government established a Guideline E and J case and Applicant did not mitigate the security concerns. He deliberately concealed his drug history from the government, at a time when he had stopped using marijuana only a few months. (3) He intended to conceal this information from the government and likely intended to keep it from his employer. This conduct violated 18 U.S.C. §1001. (4) While he disclosed his drug history during his October 2004 interview, he did not disclose the information before then, and then only when the agent was going over the questions on his application. The disclosure was neither prompt nor good-faith within the meaning of the mitigating conditions.

Applicant's 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 himself provides some indication of his 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 he is willing to put his personal needs ahead of legitimate government interests. I resolve Guideline E and J against Applicant.

The government established a Guideline H case, (5) but Applicant mitigated the security concerns. Applicant's use of ecstasy, LSD, and hallucinogenic mushrooms was experimental at best, and ended in 2002. His use of marijuana was only slightly more extensive and ended in fall 2003, over 2½ years ago. Although his drug use was not isolated or aberrational, (6) his use was not recent. (7) In addition, he has stated a credible intent, backed up by more than 2½ years

drug free behavior, to refrain from drug use in the future.<sup>(8)</sup> I conclude Applicant is unlikely to use illegal drugs in the future. Accordingly, I resolve Guideline H for Applicant.

### **FORMAL FINDINGS**

Paragraph 1. Guideline E: AGAINST APPLICANT

Subparagraph a: Against Applicant

Paragraph 2. Guideline H: FOR APPLICANT

Subparagraph a: For Applicant

Subparagraph b: For 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.

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**John G. Metz, Jr.**  
**Administrative Judge**

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
3. 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. . . ;
4. E2.A10.1.2.1. Allegations or admission of criminal conduct, regardless of whether the person was formally charged; E2.A10.1.2.2. A single serious crime or multiple lesser offenses.
5. E2.A8.1.2.1. Any drug abuse. . . ; E2.A8.1.2.2. Illegal drug possession, including. . . purchase. . .
6. E2.A8.1.3.2. The drug involvement was an isolated or aberrational event;
7. E2.A8.1.3.1. The drug involvement was not recent;
8. E2.A8.1.3.3. A demonstrated intent not to abuse any drugs in the future;