

KEYWORD: Drug Involvement; Personal Conduct

DIGEST: Forty-seven-year old Applicant's marijuana use commenced during her early teen years and continued until at least 2003. Despite a period of abstinence, she has not mitigated the security concerns arising from her drug involvement and related personal conduct. Clearance is denied.

CASE NO: 05-02630.h1

DATE: 05/26/2006 DATE: May 26, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-02630

DECISION OF ADMINISTRATIVE JUDGE

NOREEN A. LYNCH

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

SYNOPSIS

Forty-seven-year old Applicant's marijuana use commenced during her early teen years and continued until at least 2003. Despite a period of abstinence, she has not mitigated the security concerns arising from her drug involvement and related personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On August 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 Personnel Security Clearance Review Program (Directive)*, dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons 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, because of security concerns arising under Guideline H (Drug Involvement) and Guideline E (Personal Conduct).

In a sworn written statement, dated September 6, 2005, Applicant responded to the allegations in the SOR. She elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on October 25, 2005. Department Counsel provided a complete copy of the file of relevant material (FORM) [\(1\)](#) to Applicant, along with notice of her opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on November 1, 2005. Applicant submitted additional information on November 4, 2005. This matter was assigned to another administrative judge, but reassigned to me on May 12, 2006 because of caseload considerations.

FINDINGS OF FACT

Applicant admitted all the factual allegations pertaining to drug involvement under Guideline H (subparagraphs 1.a. and 1.b.) and personal conduct under Guideline E (subparagraph 2.a.) of the SOR. Those admissions are incorporated as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is a 47-year-old employee of a defense contractor seeking to obtain a security clearance. On September 9, 2004, she submitted his security clearance application.⁽²⁾

Applicant began using marijuana at age 16 while in high school. She and her friends would smoke in a social setting on the weekends and in the summer. Applicant blames anger about her father's sudden death, and peer pressure for her use of the drug. She continued to smoke marijuana during the remainder of high school and college on a social basis. She also purchased marijuana on occasion to "pay back" and share with her friends. Applicant graduated from high school in 1977, and from college with honors in 1981.⁽³⁾

In the early 1980's, Applicant worked in the restaurant business, and she routinely smoked marijuana to relax. She married in 1982. From 1983 until 1992, during the early years of marriage, Applicant refrained from smoking for the health and well being of her children. However, the abstinence did not last.⁽⁴⁾ Applicant reverted to marijuana use on social occasions a few times a year from 1993 until 2002.

Applicant sought help from her family doctor for depression and anxiety due to stress in her marriage. She took prescribed medications for a time, but listened to her husband's advice to smoke marijuana to help with the anxiety and insomnia.⁽⁵⁾ She used marijuana to "self medicate" from 2000 until 2003. Applicant's intermittent and varying marijuana use stopped in 2003. She decided to stop "because of [my] children and granddaughter, [my] current job, and because it is illegal."

During 23 years of marriage, her husband's alcohol and drug use remained constant, and his mental health deteriorated, causing great stress in the marriage. During the marriage, Applicant was the primary source of income for the family. She had a business which was doing quite well until 2001. A series of events caused she and her husband to lose their financial stability. They almost lost their home. Applicant then blamed her husband's drug and alcohol use for her cycle of behavior with and her reliance on marijuana.⁽⁶⁾

Applicant confronted her husband about his alcohol and drug use and decided to separate and divorce in 2004. She vowed drugs would not be a part of their life. After six months they reunited. She and her husband attended some church counseling for his addictions. They also attended some Alcoholics Anonymous meetings. She filed for divorce in October 2005. She intends not to use marijuana in the future. She is willing to be tested for drug use at any time.⁽⁷⁾

Applicant has been employed by her current employer, a government contractor, since December 2002. Her supervisor knows Applicant's history and assured her she would not lose her job, even if denied a security clearance. Applicant received commendations from her superior. She received a satisfactory rating for establishing the security procedures and processes for the government contractor. (8)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to 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 E.2.2, 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 to 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 pertinent to an evaluation of the facts of this case:

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.

Guideline E- Personal Conduct: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

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

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.⁽⁹⁾ 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.⁽¹⁰⁾

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 interest of national 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. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of national security.⁽¹¹⁾

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of the 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 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, I conclude the following with respect to each allegation set forth in the SOR.

Drug Involvement

The government established its case under Guideline H. Applicant's record is replete with illegal drug use and occasional purchase of marijuana since 1976 by her own admission, Drug Involvement Disqualifying Condition (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.

Applicant never sought, nor received treatment for her use of marijuana by a credentialed medical professional. (DI DC) E2.A8.1.2.3 (*diagnosis by a credentialed medical professional*) does not apply in this case. Drug Involvement Mitigating Condition (DI MC) E2.A8.1.3.4 (*satisfactory completion of a prescribed drug treatment program, including rehabilitation and after care requirement, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional*) also does not apply.

From 1976 until at least 2003, Applicant was involved with illegal drugs. DI MC E2.A8.1.3.1 (*the drug involvement was not recent*) and (DI MC) E2.A8.1.3.2 (*the drug involvement was an isolated or aberrational event*) do not apply. Applicant ended her written responses to the SOR with the statement, "I do not intend future use." Given her history and disregard for rules, I do not find this credible. (DI MC) E2.A8.1.3.3 (*a demonstrated intent not to abuse any drugs in the future*) does not apply.

Applicant asserts her drug use was the result of peer pressure, great stress, and her husband's addictions. Applicant simply did not experiment as a teenager, out of curiosity, and then quit. Rather, she continued the use and even "self medicated" instead of using prescribed medication for her anxiety and depression. Her marijuana use continued until 2003. Applicant is now a mature woman. Her reasoning for discontinuing was primarily for her children and grandchildren. The fact that the use of marijuana is illegal, appeared to be an afterthought to Applicant. Considering all the evidence in this case, I find Applicant has failed to overcome the drug involvement concerns in the SOR. Accordingly, allegations 1.a. and 1.b. of the SOR are concluded against Applicant.

Personal Conduct

The government established its case under Guideline E Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.1 (*reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*).

Applicant presented no information to mitigate the personal conduct concern. She does not deny her illegal drug involvement and believes now that she is divorcing her husband, that is proof she will not longer use illegal drugs. I conclude the substantial evidence is reliable and shows highly questionable judgment and unwillingness to comply with the law.

I considered all the personal conduct mitigating conditions, especially PC MC E2.A5.1.3.5 (*the individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*), and find none apply in this case. The allegation under Guideline E is concluded against Applicant.

I carefully considered all the circumstances in light of the "whole person concept." I conclude Applicant is not eligible for 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

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.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 is denied.

Noreen A. Lynch

Administrative Judge

1. The government submitted five items in support of its contentions.
2. Item 4 (Applicant's Security Clearance Application (SF 86), dated September 9, 2004) at 1.
3. Item 3 (Applicant's Answer to the SOR, dated September 6, 2005) at 1-4.
4. *Id.* at 2.
5. *Id.*
6. *Id.*
7. Applicant's Response to FORM, dated November 4, 2005 at 1.
8. *Id.*
9. ISCR Case No. 96-0277 (July 11, 1997) at 2.
10. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, Para E3.1.15.
11. Directive, Enclosure 2, Para. E2.2.2