

DATE: December 27, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 05-02827

## **DECISION OF ADMINISTRATIVE JUDGE**

**MARC E. CURRY**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Stephanie Hess, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant used cocaine and ecstasy in 2000, failed to disclose it as required on a 2003 security clearance application, and offered contradictory, evasive explanations for these omissions throughout the investigative process. Clearance is denied.

### **STATEMENT OF THE CASE**

On October 24, 2005, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) stating it was unable to find that it was clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR alleged security concerns under Guideline H, drug involvement, and Guideline E, personal conduct. Applicant answered the SOR on November 4, and requested a hearing.

The case was assigned to me on August 23, 2006. A notice of hearing was issued on September 18, 2006 scheduling the hearing for October 4, 2006. The hearing was held as scheduled. During the hearing, 15 government exhibits, and the testimony of two Applicant witnesses were received. Also, I granted Department Counsel's motion to withdraw subparagraph 2.e from the SOR. DOHA received the transcript (Tr.) on October 16, 2006.

### **FINDINGS OF FACT**

I have incorporated Applicant's admissions into the findings of fact. In addition, I make the following findings of fact.

Applicant is a 36-year-old married man with two children, ages eight and two. He is a veteran of the U.S. Navy where he served from 1988 to 1998. He has a bachelor of science degree in business information systems and a master degree of business administration in information technology. He earned both degrees after his honorable discharge from the Navy. Currently, he works as a systems analyst, and teaches computer courses on a part-time basis at a community college. According to a former supervisor, he is a diligent performer who "performed well on the tasks that was [sic] required of him." [\(2\)](#)

Between approximately 1984 and 1988, while in high school, Applicant experimented with several illegal drugs including hashish, speeders, mushrooms, and marijuana. On one occasion in 1985, he was arrested and charged with possession of marijuana after being stopped for shoplifting at a department store.<sup>(3)</sup>

Applicant did not use any illegal drugs while in the Navy. Shortly after his discharge, he resumed his illegal drug use, using marijuana twice during the summer of 1998, and cocaine and ecstasy on two separate occasions in 2000.<sup>(4)</sup> During this time, he held a Top Secret clearance with access to Sensitive Compartmented Information (SCI).<sup>(5)</sup>

As part of a periodic reinvestigation in 2001, Applicant was required to complete a security clearance application (SF 86). In response to a question regarding drug use in the past seven years, he failed to list his drug use that recurred after leaving the Navy.<sup>(6)</sup> This falsification contributed to the revocation of his SCI access in January 2002.<sup>(7)</sup>

In July 2003, as part of the current security clearance investigation, Applicant completed another SF 86. Although he listed his 1998 marijuana use, he again failed to list his use of cocaine and ecstasy. During an interview with an investigative agent in 2004, Applicant stated "I haven't done an illegal drug since 1998 . . ."<sup>(8)</sup> He repeated this contention in response to government interrogatories propounded in 2005.<sup>(9)</sup>

In Applicant's appeal of the decision to revoke his access to SCI, submitted January 25, 2002, he stated unequivocally that he used cocaine during a party in 2000.<sup>(10)</sup> Later, in his Answer to the current SOR, he stated that he did not believe he actually used cocaine at the party.<sup>(11)</sup> At the hearing, during direct examination, he testified that his decision not to list the cocaine use was based upon the advice of his facility security officer.<sup>(12)</sup> Later, during cross-examination, he testified that he was so intoxicated at the party, he could not remember using it.<sup>(13)</sup>

At the hearing, Applicant also testified that he purchased, in 2000, what he believed to be ecstasy, but later concluded was an antihistamine after taking it and experiencing no psychedelic effects.<sup>(14)</sup> Because he believed it was an antihistamine, he did not list it on the SF 86.

Applicant has a history of employment-related problems. In 1994, while in the Navy, he photocopied classified information onto plain paper, and failed to properly designate the copies as classified. He took the information on the photocopied paper home, using it to study for an exam.<sup>(15)</sup> After an investigation concluded that his mishandling was not intentional, his command counseled him regarding the safekeeping of classified information, and recommended no further action.<sup>(16)</sup>

SOR subparagraph 2.j. alleges Applicant, in 2001, went on a business trip, and changed the return flight itinerary, scheduling a personal detour at his company's expense. Applicant explained that he scheduled the personal detour consistent with company regulations.<sup>(17)</sup> His supervisor at the time, who testified on his behalf at the hearing, confirmed his contention.<sup>(18)</sup>

In September 2000, Applicant took a computer accessory, owned by his employer, home to use on his personal computers.<sup>(19)</sup> He returned it three months later. In his appeal of the decision to revoke his access to SCI, he stated he had his employer's permission to take the property home.<sup>(20)</sup> When Department Counsel asked him at the hearing if he had permission, he replied, "I don't think so."<sup>(21)</sup>

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. 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 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 involves an evaluation 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 and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future.

I find the following adjudicative guidelines most 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.

**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 below.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is "clearly consistent with the national interest"<sup>(22)</sup> In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The government is responsible for presenting witnesses and other evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

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 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 an applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Applicant's loyalty is not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides 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."

## CONCLUSIONS

### **Drug Involvement**

Applicant engaged in the recreational use of illegal drugs in the 1980s, and used them on four occasions between 1998 and 2000. Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1 (*Any drug use*) applies. His most frequent drug use occurred when he was a teenager. Although his drug use recurred ten years later, it was minimal, and ended

more than six years ago. Drug Involvement Mitigating Condition (DI MC) E2.A8.1.3.1 (*The drug involvement was not recent*) applies.

### **Personal Conduct**

Applicant's failure to disclose his use of ecstasy and cocaine throughout the investigative process raises the issue of whether Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2 (*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, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies. Applicant's explanation of these omissions was alternately evasive and contradictory. Given his lack of credibility, I conclude PC DC E2.A5.1.2 applies without mitigation.

Applicant's employment-related problems over the years raise the issue of whether PC DC E2.A5.1.2.5 (*A pattern of dishonesty or rule violations*) applies. Applicant's supervisor at the time the alleged business travel account fraud occurred <sup>(23)</sup> testified that his actions were consistent with company policy. PC DC E2.A5.1.2.5 does not apply to this incident.

Although PC DC E2.A5.1.2.5 applies to the remaining employment-related incidents, they were minor in nature, and the most recent one occurred more than six years ago. Applicant's history of employment-related problems does not pose a personal conduct security concern.

### **Whole Person Concept**

In the years since Applicant abused illegal drugs on a regular basis, he served a 10-year stint in the Navy, obtained an undergraduate and a graduate degree, and started a family. Although his drug use recurred in 1998, it was infrequent. Also, it has not recurred in more than six years. Applicant's past drug involvement does not pose a continuing security risk.

Conversely, Applicant's failure throughout the investigative process to disclose his recurrent drug use poses an unmitigated security concern. I was particularly troubled by his testimony at the hearing regarding these omissions. Rather than accept responsibility for these omissions, he sought to either minimize their significance, or rationalize them by offering explanations that grew increasingly contradictory and outlandish as the hearing progressed. Applicant's personal conduct poses an unmitigated security concern. Clearance is denied.

### **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: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.I: For Applicant

Paragraph 2 - Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

Subparagraph 2.e: WITHDRAWN

Subparagraph 2.f: Against Applicant

Subparagraph 2.g: Against Applicant

Subparagraph 2.h: For Applicant

Subparagraph 2.I: For Applicant

Subparagraph 2.j: For 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.

Marc E. Curry

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended. (Directive).
2. Tr. 75.
3. Answer to SOR, dated November 4, 2005, at 2-3.
4. Exhibit 7, Appeal of Revocation of SCI Access, dated January 25, 2002, at 4.
5. *Id.* at 1.
6. Exhibit 6, U.S. Government Memorandum revoking Applicant's SCI Access, dated January 2, 2002, at 1.
7. *Id.* at 4.
8. Exhibit 2, Signed, Sworn Statement, dated August 19, 2004, at 2.
9. Exhibit 3, Applicant's Response to Government Interrogatories, dated June 21, 2005, at 3.
10. *See* note 4 at 4.

11. *See* note 3 at 2.
12. Tr. 36.
13. Tr. 54.
14. Tr. 56.
15. Exhibit 12, U.S. Naval Criminal Investigative Service, dated June 24, 1996, at 1.
16. Exhibit 11, Department of Navy, Case Information Summary, dated July 16, 1998, at 1.
17. Answer, dated October 24, 2005, at 4.
18. Tr. 78.
19. Tr. 62.
20. Exhibit 7 at 2.
21. Tr. 63.
22. *See* Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.
23. SOR subparagraph 2.j.