

KEYWORD: Drugs

DIGEST: Applicant started using marijuana extensively in approximately September 1982, when he was about 24 years old, and continued abusing it with varying frequency until at least September 2002, when he was about 44 years old. His experimentation with cocaine and methamphetamine ceased in 1988 or earlier. Applicant's actions, especially while holding a secret security clearance during 1982-88, reflect a high degree of questionable judgment and irresponsibility. There is no evidence that he ever participated in a drug treatment program. In the absence of a longer current period of abstinence, his vow to avoid substance abuse cannot yet be construed as a demonstrated intent not to abuse any drugs in the future. Clearance is denied.

CASE NO: 05-03143.h1

DATE: 05/31/2006

DATE: May 31, 2006

---

In re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 05-03143

**DECISION OF CHIEF ADMINISTRATIVE JUDGE**

**ROBERT ROBINSON GALES**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant started using marijuana extensively in approximately September 1982, when he was about 24 years old, and continued abusing it with varying frequency until at least September 2002, when he was about 44 years old. His experimentation with cocaine and methamphetamine ceased in 1988 or earlier. Applicant's actions, especially while holding a secret security clearance during 1982-88, reflect a high degree of questionable judgment and irresponsibility. There is no evidence that he ever participated in a drug treatment program. In the absence of a longer current period of abstinence, his vow to avoid substance abuse cannot yet be construed as a demonstrated intent not to abuse any drugs in the future. Clearance is denied.

**STATEMENT OF THE CASE**

On August 13, 2004, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86).  
<sup>(1)</sup> On July 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 Guideline H (drug involvement), 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 answer, dated August 2, 2005, but notarized September 2, 2005,<sup>(2)</sup> Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel prepared the government's written case on October 4, 2005, but for unspecified reasons, it was not forwarded to Applicant until October 25, 2005.<sup>(3)</sup> It apparently never reached him, for it was resent on March 20, 2006.<sup>(4)</sup> A complete copy of the FORM<sup>(5)</sup> was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Any such submissions were due by April 21, 2006. He chose not to respond. The

case was assigned to me on May 18, 2006.

## FINDINGS OF FACT

Applicant admitted the factual allegations pertaining to drugs under Guideline H (subparagraphs 1.a. through 1.d.). Those admissions are incorporated herein as findings of fact. 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 47-year-old employee of a defense contractor, and is seeking to obtain a security clearance the level of which has not been divulged. He was previously granted a secret security clearance in September 1982, but it lapsed in about 1988.<sup>(6)</sup> He has been with his current employer since August 2003, and presently holds the position of program engineering manager.<sup>(8)</sup> The quality of his work performance has not been provided. Applicant was married in November 1986,<sup>(9)</sup> and has one daughter.<sup>(10)</sup>

He was a substance abuser whose choice of illegal substances was marijuana, cocaine, and methamphetamine.<sup>(11)</sup> He started using marijuana in approximately September 1982, when he was about 24 years old, and continued abusing it with varying frequency until at least September 2002,<sup>(12)</sup> when he was about 44 years old. Applicant acknowledged using marijuana "extensively,"<sup>(13)</sup> and quantified his use of marijuana during 1982-88, as 150 occasions.<sup>(14)</sup> In about 1988, his use of marijuana was reduced, and generally occurred during parties and rock concerts.<sup>(15)</sup> He last used marijuana in September 2002, and has purportedly abstained since that time.<sup>(16)</sup> There is no evidence to rebut his contention that no further marijuana use occurred after September 2002. During the period September 1982 until approximately December 1988, Applicant experimented with methamphetamine on one occasion and cocaine on two to four occasions.<sup>(17)</sup>

During the period of his substance abuse, Applicant purchased small amounts of marijuana for his personal use.<sup>(18)</sup> The cocaine and methamphetamine were furnished to him by others.<sup>(19)</sup>

Applicant's motivation for his substance abuse is unclear. He started using marijuana because most of his friends were drug users.<sup>(20)</sup> No other motivating factors were divulged. In September 2002, Applicant decided to stop his substance abuse when he realized "the foolishness of continuing using illegal substances."<sup>(21)</sup> He has professed having no desire to use illegal substances and it is his plan to never use them again, because it was "time to be a responsible adult and father."<sup>(22)</sup>

The is no evidence to indicate if Applicant has ever participated in a drug treatment program.

## 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 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 guideline 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. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.**

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

Because 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," or "clearly consistent with the national interest."<sup>(23)</sup> For the purposes herein, despite the different language in each, I have concluded all of the standards are the same. 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.

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, 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 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 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 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 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 considering of all the facts in evidence, and after applying all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

The government has established its case under Guideline H. Applicant's illegal marijuana abuse, as well as his cocaine and methamphetamine experimentation, are of concern, especially in light of his desire to have access to the nation's secrets. 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 (*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 did not simply experiment with marijuana a few times, as he did with cocaine and methamphetamine, and then quit. Instead, he commenced regularly using marijuana as an adult, and continued doing so on over 150 occasions for nearly 20 years. The illegal nature of his endeavor was of no significance to him. By his actions over that period, he exhibited a continuing pattern of questionable judgment, irresponsibility, and immature behavior. Applicant's overall conduct pertaining to his illegal substance abuse clearly falls within 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*).

An analysis of Applicant's conduct under the "whole person concept," reveals knowledgeable, voluntary participation in illegal substance abuse that occurred on a frequent basis for 20 years, when Applicant was between the ages of 24 and 44 years old, with unclear motivation, and no evidence of rehabilitation other than four years of purported abstinence. There is little evidence of Applicant's motivation for abusing illegal substances for 20 years. Likewise, although he asserts he stopped in 2002 because he realized the foolishness of his conduct, especially because he had a child approaching her teenage years, there is no real explanation for the newly developed epiphany.

Applicant's substance abuse during 1982-88 is of particular significance considering he held a secret security clearance at that time. While there has been no development of his employer's drug policy, as a government contractor, it is presumed that its policy coincides with the government's "zero tolerance" policy. Applicant's substance abuse was also against the law, but those factors were apparently never considered by him. Instead, he ignored policy and the law, and sundered the fiduciary responsibilities he held by virtue of his security clearance.

I am also concerned about what I perceive as a lack of candor by Applicant when he described his substance abuse in his SF 86 in August 2004. In that application he acknowledged using the three identified substances during the period

1982-88. However, one year later he admitted using marijuana at least until September 2002, or four more years than initially stated. This lack of candor, the absence of a rehabilitation program, and the somewhat vague motivation for using and stopping, do little to inspire confidence that Applicant's overall substance abuse is a thing of the past that will not recur.

Since Applicant has abstained from cocaine and methamphetamine experimentation since about 1988 or before, and from regular marijuana abuse since September 2002, it might be argued such abuse 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 abuse to be recent, but his cocaine and methamphetamine experimentation to be stale because it did not recur.

Considering the duration of Applicant's 20 years of marijuana abuse, his actions do not support the application of DI MC E2.A8.1.3.2. (*the drug involvement was an isolated or aberrational event*). In the absence of a longer period of abstinence, Applicant's new vow 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*).

Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate, meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. The nature of Applicant's actions and activities therefore pose a serious potential risk to the nation's security precautions which go to the very heart of the nation's security system. An applicant's responsibilities associated with the granting of a security clearance are considerable in terms of protecting the national security and in maintaining appropriate personal conduct. Along with the responsibilities is accountability. In this instance, Applicant is now held accountable for those past actions and activities.

I do not take this position lightly, but based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my evaluation of the evidence, my negative assessment of Applicant's credibility, and my application of the pertinent factors and conditions under the Adjudicative Process, including the "whole person concept," Applicant has failed to mitigate or overcome the government's case under Guideline H. The evidence leaves me with grave questions and doubts as to Applicant's continued security eligibility and suitability. For the reasons stated, I conclude Applicant is not eligible for access to classified information. Accordingly, allegations 1.a. and 1.d. of the SOR are concluded against Applicant. Allegations 1.b. and 1.c. of the SOR are concluded in favor of Applicant.

### **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.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: 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. There are two versions of the application. One version contains questions 1-16, and 43; the other, questions 1-43. *See* Item 4 (Security Clearance Application (SF 86)-privacy version, dated August 13, 2004); and Item 5 (Security Clearance Application (SF 86), dated August 13, 2004).
2. The August date is apparently in error because the SOR was not received by Applicant until August 14, 2005. Item 2 (Receipt of SOR, dated August 14, 2005).
3. Although the File of Relevant Material (FORM) and the Department Counsel signature on the letter of transmittal are both dated October 4, 2005, the actual letter of transmittal is dated October 25, 2005.
4. Receipt of FORM, dated March 20, 2006, with unsigned annotation, dated March 20, 2006.



5. The government submitted five items in support of the allegations.
6. [\(7\)](#)
7. Item 3 (Response to SOR, notarized September 2, 2005) at 1-2. -
8. Item 4, *supra* note 1, at 1.
9. *Id.* at 3.
10. Item 3, *supra* note 6, at 3.
11. *Id.*
12. *Id.*
13. *Id.*
14. Item 5, *supra* note 1, at 5.
15. Item 3, *supra* note 6, at 3.
16. *Id.*
17. *Id.*; Item 5, *supra* note 1, at 5.
18. Item 3 at 3.
19. *Id.*
20. *Id.*
21. *Id.*
22. *Id.*
23. 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.)