

KEYWORD: Drugs; Personal Conduct

DIGEST: Fifty-eight-year old Applicant illegally used marijuana for over 30 years, including the periods 1969-2000 and again in November 2003, despite holding a security clearance since November 2002. His pattern of questionable judgment, irresponsibility, and immature behavior in using marijuana, especially after having been granted a security clearance, raises grave doubts about his security eligibility and suitability. In the absence of a longer period of confirmed current continuing abstinence, his recent 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: 05-03433.h1

DATE: 03/06/2006

DATE: March 6, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-03433

DECISION OF CHIEF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Sabrina E. Redd, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Fifty-eight-year old Applicant illegally used marijuana for over 30 years, including the periods 1969-2000 and again in November 2003, despite holding a security clearance since November 2002. His pattern of questionable judgment, irresponsibility, and immature behavior in using marijuana, especially after having been granted a security clearance, raises grave doubts about his security eligibility and suitability. In the absence of a longer period of confirmed current continuing abstinence, his recent 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 September 21, 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 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 October 3, 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 December 29, 2005. 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. He submitted four documents. Department Counsel did not object to these documents and they were admitted as Applicant Exhibits 1-4, respectively. The case was assigned to me on March 2, 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 the factual allegation pertaining to personal conduct under Guideline E (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 58-year-old employee of a defense contractor, and he is seeking to retain a previously granted security clearance. He was granted a SECRET clearance in November 2002.⁽²⁾ Applicant has been employed by the same company, currently as an electronics system tester,⁽³⁾ since April 1997.⁽⁴⁾ Several supervisors and colleagues support his application and characterize him and his work performance in favorable terms. He is considered dependable, efficient, reliable, and trustworthy.⁽⁵⁾ He served with the U.S. Army, in an enlisted status, from March 1968 until November 1971.

For over 30 years, Applicant was an illegal substance abuser whose substance of choice was marijuana. He started using it 1969, while he was on active duty with the U.S. Army serving in Vietnam, to deal with the situation, and continued using it on an occasional basis⁽⁶⁾ until some time in 2000, at a party.⁽⁷⁾ He contends he abstained from 2000 until November 2003,⁽⁸⁾ and there is no evidence to rebut his contention. In November 2003, while drinking beer with friends at a party, a marijuana joint was passed around, and Applicant took a puff.⁽⁹⁾ On November 25, 2003, his employer subjected him to a random drug screen, the results of which were positive.⁽¹⁰⁾

As a direct result of the positive screen, Applicant was placed on a three-day suspension and offered a voluntary enrollment in a drug/alcohol rehabilitation program administered through the employer's Employee Assistance Program (EAP).⁽¹¹⁾ He enrolled in a program in January 2004, and underwent a drug evaluation and education under the direction of a licensed and board certified Mental Health Counselor/Psychotherapist.⁽¹²⁾ Applicant's program continued once a week until February 10, 2004.⁽¹³⁾ He underwent an updated interview, examination, and drug screen in January 2006.⁽¹⁴⁾

In November 2004, upon being interviewed by a special agent of the Defense Security Service (DSS), Applicant acknowledged his marijuana use in November 2003 was a mistake and an aberration, and claimed he was caught off guard while with his friends.⁽¹⁵⁾ He stated he does not plan to use any controlled substances in the future.

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.

Personal Conduct--Guideline E: 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 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,"⁽¹⁶⁾ or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I conclude that both 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 use of marijuana from 1969 until 2000 and in November 2003 is of concern, especially in light of his desire to have continuing 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 clearly falls within Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1. (*any drug abuse*).

The earlier activity initially occurred when Applicant was a relatively young adult serving in a war zone. Had such conduct ceased and not been repeated, there might be no further security concern. However, he continued using marijuana for over 30 years. Then, after abstaining for three years, he used it again at a November 2003 party with friends. He contends he had no specific motivation for using the marijuana except that his friends' offer to do so took him off guard. Applicant's actions, especially after he had been granted a security clearance in November 2002, reflect a high degree of questionable judgment, irresponsibility, and immature behavior. He placed his own party-related drug-induced pleasures above his fiduciary responsibilities as a holder of a security clearance.

It might be argued the most recent marijuana involvement, occurring in November 2003, was not recent, a condition recognized under Drug Involvement Disqualifying Condition (DI MC) E2. A8.1.3.1. (*the drug involvement was not recent*). While the presence or absence of rehabilitation and other pertinent behavioral changes are significant factors in the overall adjudicative process, the presence or absence of one particular condition is not controlling. In this instance, I consider Applicant's marijuana use in November 2003 to be recent.

Applicant's occasional use of marijuana from 1969 to 2000, and again in November 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 has undergone a drug evaluation and one month of weekly substance abuse education, but has furnished no information as to the exact nature and scope of such program other than the characterization of "drug education." It is unclear if the program included individual or group therapy. There is no diagnosis in the record, but there is a favorable prognosis. In the absence of more specific program and counseling information, I am unable to determine if the program

qualified as a "prescribed drug treatment program." These circumstances negate the full application of DI MC E2.A8.1.3.4. (*satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional*).

Applicant asserts he has abstained from marijuana since his positive drug screen in November 2003. However, based on the record evidence, including the more than 30 year period of his marijuana use and his somewhat unclear motivation, 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 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*). Under these circumstances, Applicant has failed to mitigate or overcome the government's case. Accordingly, allegations 1.a. through 1.c. of the SOR are concluded against Applicant.

The government has established its case under Guideline E. As noted above, Applicant's conduct was predominately drug-related, but also criminal. And, because it involved questionable judgment, untrustworthiness, and unreliability, personal conduct becomes an issue, however redundant. Applicant's repeated violations of the law and DoD policy, fall within Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.5. (*a pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency*). In this instance, no mitigating conditions apply. Consequently, I conclude that Applicant has failed to mitigate or overcome the government's case. Accordingly, allegation 2.a. of the SOR is concluded against Applicant.

There are grave 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.

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 THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Paragraph 2., Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the 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 seven items in support of its contentions.
2. Item 7 (JPAS Person Summary, dated December 29, 2005), at 1.
3. Applicant Exhibit 4 (Letter from Facility Security Officer, dated January 31, 2006), at 1.
4. Item 4 (Security Clearance Application, dated February 25, 1998), at 2.
5. *Id.* at 2-3.
6. Item 3 (Response to SOR, dated October 3, 2005), at 3.
7. Item 6 (Statement, dated November 1, 2004), at 2.
8. *Id.*

9. *Id.*

10. Item 3, *supra* note 6, at 2.

11. Item 5 (Employer Adverse Information Report, dated December 2, 2003).

12. Applicant Exhibit 2 (Letter from Mental Health Counselor/Psychotherapist, dated January 19, 2006). It should be noted that the Mental Health Counselor/Psychotherapist characterized the sessions as "Drug education."

13. *Id.*

14. *Id.*; Applicant Exhibit 3 (Laboratory Report, dated January 21, 2006), at 1-2.

15. Item 6, *supra* note 7, at 3.

16. Exec. Or. 12968, "*Access to Classified Information*," as implemented by Department of Defense Regulation 5200.2-R, "*Personnel Security Program*," dated January 1987, as amended by Change 3, dated November 8, 1995, and further modified by memorandum, dated November 10, 1998. However, the Directive, as amended by Change 4, dated April 20, 1999, uses both "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.)