

KEYWORD: Drug Involvement; Personal Conduct; Criminal Conduct

DIGEST: Applicant's illegal use of marijuana from January 1996 to 1999, and on one occasion in January 2004 after submitting an application for a security clearance, raises a concern about his judgment. His deliberate omission of his use of LSD in 1996 and 1999 raise further security concerns. Clearance is denied.

CASE NO: 05-03429.h1

DATE: 05/31/2006

DATE: May 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No.05-03429

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's illegal use of marijuana from January 1996 to 1999, and on one occasion in January 2004 after submitting an application for a security clearance, raises a concern about his judgment. His deliberate omission of his use of LSD in 1996 and 1999 raise further security concerns. Clearance is denied.

STATEMENT OF CASE

On July 19, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline H, Drug Involvement; Guideline E, Personal Conduct; and Guideline J, Criminal Conduct.

On July 27, 2005, Applicant responded to the SOR allegations. Applicant elected to have his case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on January 24, 2006. The FORM was mailed to Applicant on January 27, 2006, and received on February 3, 2006. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond. The case was assigned to me on March 17, 2006.

FINDINGS OF FACT

Applicant is 25 years old and is a vocational student with a defense contractor. He is an apprentice with an electric company. He submitted a security clearance application on November 13, 2003.⁽²⁾ He admits to all of the allegations in the SOR.⁽³⁾

Between January 1996 to 1999 while in high school, Applicant used marijuana approximately 20 times.⁽⁴⁾ In January 2004, Applicant used marijuana at a birthday party. Some friends were using marijuana and he took a hit off the marijuana cigarette.⁽⁵⁾ He used LSD once in 1996 and once in 1999. He purchased LSD for his own personal use in 1999.⁽⁶⁾

On June 12, 2000, Applicant was arrested for Open Container. He was found guilty and ordered to perform 10 hours of community service and pay \$100 in fines and court costs.⁽⁷⁾ In approximately 2002, Applicant manufactured a false identification card for an underage friend so he could purchase alcohol.⁽⁸⁾

In response to question 27 on his November 13, 2003, security clearance application "Your Use Of Illegal Drugs and Drug Activity - Use of Illegal Drugs", Applicant answered "Yes" and listed marijuana use on approximately 20 occasions from 1996 to 1998. He did not list his LSD use in 1996 and 1999.⁽⁹⁾ He did not list his LSD use because he did not want to jeopardize his employment.⁽¹⁰⁾

In the past three years, Applicant has worked in high security areas. He has not used any illegal substances since January 2004 and does not intend to do so in the future.⁽¹¹⁾

POLICIES

The President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information."⁽¹²⁾ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

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. [\(13\)](#)

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 a person may not properly safeguard classified information. [\(14\)](#)

Guideline J, Criminal Conduct: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. [\(15\)](#)

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.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." [\(16\)](#) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. [\(17\)](#) An administrative judge should consider the following factors: (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. [\(18\)](#)

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. [\(19\)](#) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts admitted by the applicant or proven by Department Counsel. The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision. [\(20\)](#) "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." [\(21\)](#)

A person granted access to classified information enters into a special relationship with the government. 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. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a prima facie case for disqualification under Guidelines H, E, and J.

Guideline H - Drug Involvement

Applicant's recreational use of illegal drugs while in high school raise a security concern. Between 1996 and 1999, he used marijuana approximately 20 times and LSD on two occasions. The drug involvement security concern is heightened further by his decision to use marijuana at a party in January 2004, after he had been granted an interim security clearance in December 2003.

The following Drug Involvement Disqualifying Conditions (DI DC) apply to Applicant's case. DI DC E2.A8.1.2.1: (*Any drug abuse*) applies due to his past history of illegal drug use. DI DC E2.A8.1.2.2: (*Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*) applies with respect to his possession of illegal drugs and his purchase of LSD in 1999 for his personal use.

The drug involvement concern can be mitigated. However, I find none of the mitigating conditions apply. Applicant's last use of illegal drugs was after he had submitted his security clearance application. This shows a lack of judgment. His last drug involvement was recent. The illegal drug use was not an isolated or an aberrational event since he used illegal drugs on several occasions between 1996 to January 2004. Although he has indicated he does not intend to use illegal drugs in the future, it is too soon to conclude that he will follow through on his intentions considering the recency of his 2004 marijuana use. I find against Applicant under Guideline H.

Guideline E - Personal Conduct

Applicant deliberately falsified his security clearance application when he failed to list his LSD use in 1996 and 1999. He did not list his LSD use because he was afraid he would lose his job.

Personal Conduct Disqualifying Condition (PC DC) 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, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities) applies with respect to his deliberate omission of his LSD use on his security clearance application.

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*) applies with respect to Applicant's manufacture of a false identification card for his underage friend in 2002 and his falsification of his security clearance. Both actions indicate a certain element of dishonesty and are rule violations.

I find none of the Personal Conduct Mitigating Conditions apply. Applicant's conduct raises questions about his judgment, trustworthiness, and reliability. There is nothing in the record evidence which indicates he made an effort to correct the falsification on his security clearance application before being confronted with the facts. I find against Applicant under Guideline E.

Criminal Conduct

Applicant's deliberate falsification of his security clearance application violated 18 U.S.C. § 1001, a felony. The statute states it is a criminal offense to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation or knowingly make or use a false writing in any matter within the jurisdiction of the executive branch of the Government of the United States. Security clearances are within the jurisdiction of the executive branch of the Government of the United States. ⁽²²⁾ Information is material if it would affect a final agency decision or, if incorrect, would impede a thorough and complete investigation of an applicant's background. ⁽²³⁾ Applicant knowingly and willfully falsified his security clearance application by failing to list he had used LSD on two occasions in 1996 and 1999. An applicant's history of illegal drug use is relevant and material to a determination of his security worthiness.

Applicant was also arrested in June 2000 for Open Container. Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1: (*Allegations or admission of criminal conduct, regardless of whether the person was formally charged*) and CC DC E2.A10.1.2.2 (*A single serious crime or multiple lesser offenses*) applies in this case. None of the mitigating conditions under Criminal Conduct apply due to the recency of falsifying his 2003 security clearance application. The criminal conduct was not isolated and it is too soon to conclude that Applicant is successfully rehabilitated. I find against Applicant under Guideline J.

I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I find Applicant has failed to mitigate the security concerns raised by the drug involvement, personal conduct, and criminal conduct concern. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance.

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

Subparagraph 1.c. Against Applicant

Subparagraph 1.d. Against Applicant

Paragraph 2 Guideline E: AGAINST APPLICANT

Subparagraph 2.a. Against Applicant

Subparagraph 2.b. Against Applicant

Paragraph 3 Guideline J: AGAINST APPLICANT

Subparagraph 3.a. Against Applicant

Subparagraph 3.b. 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..

Erin C. Hogan

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 and modified (Directive).
2. Item 4.
3. Item 2.
4. Item 2; Item 4, question #27.
5. Item 2 at 3.
6. *Id.*
7. Item 4, question #24.
8. Item 2.
9. Item 4, question 27.

10. Item 2 at 3.
11. *Id.*
12. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
13. Directive ¶ E2.A8.1.1.
14. Directive ¶ E2.A5.1.1.
15. Directive ¶ E2.A10.1.1.
16. Directive ¶ E2.2.1.
17. *Id.*
18. *Id.*
19. Directive ¶ E3.1.14.
20. Directive ¶ E3.1.15.
21. Directive ¶ E.2.2.2.
22. *See Egan*, 484 U.S. at 527.
23. ISCR Case No. 01-06870, 2002 WL 32114535 (App. Bd. Sep. 13, 2002).