

KEYWORD: Drugs

DIGEST: Applicant was brought up in an environment of substance abuse engendered by his mother, stepfather, and one of his sisters. He resisted experimenting with marijuana until he succumbed to combined family and other pressures in 1996, when he was 19 years old. After abstaining for four years, he resumed using marijuana occasionally, interrupted by lengthy periods (one or two years) of periodic abstinence, over a period of 11 years. In 2004, he broke free from the influence of his family and the grasp of marijuana, and has been abstinent ever since. He no longer associates with those family members, and he is now more mature and committed to being marijuana-free in the future. Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the government's case under Guideline H. Clearance is granted.

CASENO: 05-03500.h1

DATE: 02/28/2006

DATE: February 28, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-03500

DECISION OF CHIEF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was brought up in an environment of substance abuse engendered by his mother, stepfather, and one of his sisters. He resisted experimenting with marijuana until he succumbed to combined family and other pressures in 1996, when he was 19 years old. After abstaining for four years, he resumed using marijuana occasionally, interrupted by lengthy periods (one or two years) of periodic abstinence, over a period of 11 years. In 2004, he broke free from the influence of his family and the grasp of marijuana, and has been abstinent ever since. He no longer associates with those family members, and he is now more mature and committed to being marijuana-free in the future. Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the government's case under Guideline H. Clearance is granted.

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, 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 September 7, 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 October 19, 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. Any such submissions were due by January 13, 2006. He chose not to respond. The case was assigned to me on February 17, 2005.

FINDINGS OF FACT

Applicant has admitted the factual allegation pertaining to drugs under Guideline H (subparagraph 1.a.). That admission is incorporated herein as a finding 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 28-year-old employee of a defense contractor, and is seeking to obtain a security clearance. Applicant and his wife were married in February 2003. He attended a university for four months in 1998, but never completed his studies or obtained a degree. He has been with his current employer since December 2003, and presently holds the position of infrastructure consultant. He submitted no evidence on the quality of his performance.

Applicant was raised in an environment of substance abuse. ⁽²⁾ He has an older half-sister, born in 1975, ⁽³⁾ and a younger sister, born in 1981. ⁽⁴⁾ Following his parents' divorce in 1981, he resided with his father. ⁽⁵⁾ It is unclear where his sisters were placed. From 1981 until 1996, he visited his mother and her common-law husband on one or two occasions each quarter. During those visits he became aware that they were using marijuana. ⁽⁶⁾ In 1993, while in a vehicle with one of his sisters and her friend, the sister and the friend used a marijuana cigarette and offered it to him, but, at that time, he withstood the family pressures and declined the offer. ⁽⁷⁾

Three years later, in 1996, he tried marijuana for the first time. He was about 16 years old when he and a coworker, sitting in an automobile, decided to smoke marijuana, which the coworker supplied at no cost to Applicant. He took one or two puffs of marijuana through a "bong." ⁽⁸⁾ The following day, after informing his mother and stepfather of his marijuana use, they offered him some more marijuana. He took one or two puffs from a marijuana cigarette. ⁽⁹⁾ Applicant abstained for four years until 2000 when, while on a water rafting trip, one of his sisters offered him a pipe of marijuana. He took one or two puffs. ⁽¹⁰⁾ Two years later, while in Applicant's residence, his stepfather offered him a marijuana cigarette. He took one or two puffs in the presence of his wife. ⁽¹¹⁾ The following year, in the garage of his residence, he and friends used marijuana. Once again, Applicant took one or two puffs. ⁽¹²⁾ In September 2004, while

attending a folk concert with his wife and stepfather, Applicant again took one or two puffs of marijuana with his wife. (13) He has abstained since September 2004. (14)

Applicant has minimized any contacts with substance abusers, (15) with the exception of his wife. His mother and her common-law husband separated in late 2003, and she now resides with her mother in another state. (16) He has lost contact with her by choice, (17) and has minimal contact with his "sister." (18) In October 2004, he stated that he does "not anticipate ever being in a place or condition where a family member would consider using drugs in [Applicant's] presence," (19) and he does "not anticipate using marijuana or any type of illegal drug in the future." (20) In September 2005, he strengthened his resolve by stating "I have made a commitment to my family, my employer, and to the US Government that I will not use again. . . ." (21)

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.

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,"⁽²²⁾ or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded both standards are one and 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 improper and illegal use of marijuana is 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. as *"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'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*).

As noted above, Applicant was brought up in an environment of substance abuse engendered by his mother, stepfather, and one of his sisters. He held off experimenting with marijuana until he succumbed to combined family and other pressures when he and a coworker smoked a "bong" of marijuana in 1996. Thereafter, he did not simply experiment a few times out of curiosity and then quit. Rather, after abstaining for four years, he resumed using marijuana when he was a young adult, notwithstanding the illegal nature of his endeavor, and exhibited a continuing pattern of questionable judgment, irresponsibility, and immature behavior, seemingly coinciding with the sense of values which had been instilled in him. Although he characterized his marijuana use over the years as experimentation, in reality, it was occasional substance abuse, interrupted by lengthy periods (one or two years) of periodic abstinence, over a period of 11 years.

In September 2004, Applicant broke free from the influence of his family and the grasp of marijuana, and has been abstinent ever since. He no longer associates with those family members who initially introduced him to marijuana and he is now more mature and committed to being marijuana-free in the future. His actions support the application of Drug Involvement Mitigating Condition (DI MC) E2.A8.1.3.1. (*the drug involvement was not recent*) and DI MC E2.A8.1.3.3. (*a demonstrated intent not to abuse any drugs in the future*). The frequency and duration of his marijuana use do not support the application of DI C E2.A8.1.3.2. (*the drug involvement was an isolated or aberrational event*). His actions in choosing to avoid temptation and by remaining abstinent demonstrate good insight into his past environment and past substance abuse. Thus, in light of the evidence presented, I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the government's case under Guideline H. Accordingly, allegation 1.a. of the SOR is concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is 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: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Robert Robinson Gales
Chief Administrative Judge

1. The government submitted six items in support of its contentions.

2. Item 5 (Statement, dated October 21, 2004), at 1.
3. Item 4 (Security Clearance Application (SF 86), dated March 26, 2004), at 3.
4. *Id.*
5. Item 5, *supra* note 2, at 1.
6. *Id.*
7. *Id.* Although the identity of the sister has not been divulged, at the time of the incident, his younger sister would have been 12 years old and his older half-sister would have been 18 years old.
8. *Id.* at 1-2.
9. *Id.* at 2.
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*
14. Item 6 (Response to Interrogatories, dated July 12, 2005), at 2.
15. Item 5, *supra* note 2, at 2.
16. *Id.*
17. Item 6, *supra* note 14, at 4.
18. Item 5, *supra* note 2, at 2.
19. *Id.*
20. *Id.*
21. Item 3 (Response to SOR, dated September 7, 2005), at 1.
22. 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.)