

KEYWORD: Drugs

DIGEST: Applicant is 44 years old and works for a defense contractor as a senior engineer scientist. In college, he developed a marijuana habit and he would occasionally buy some of the drug for personal consumption. His abuse of the substance started to decrease when he was in his mid-20s, but he continued to use it with a particular circle of friends until June 2004. Because his drug use ceased less than two years ago, and because his expression of intent to not use the drug in the future is equivocal, Applicant failed to mitigate security concerns. Clearance is denied.

CASE NO: 05-03768.h1

DATE: 05/31/2006

DATE: May 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-03768

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 44 years old and works for a defense contractor as a senior engineer scientist. In college, he developed a marijuana habit and he would occasionally buy some of the drug for personal consumption. His abuse of the substance started to decrease when he was in his mid-20s, but he continued to use it with a particular circle of friends until June 2004. Because his drug use ceased less than two years ago, and because his expression of intent to not use the drug in the future is equivocal, Applicant failed to mitigate security concerns. Clearance is denied.

STATEMENT OF THE CASE

On October 11, 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). That SOR detailed reasons why, pursuant to Guideline H (Drug Involvement), it could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance for Applicant. In his response, dated November 4, 2005, Applicant admitted to three of the four allegations contained in the SOR, and denied the remaining allegation. Additionally, he requested an administrative determination based on the written record.

The Government's case was submitted on March 15, 2006. A complete copy of the file of relevant material (FORM)⁽¹⁾ was provided to Applicant on March 16, 2006. He was afforded the opportunity to file objections and submit evidence in refutation, extenuation, or mitigation. Applicant received the FORM on March 30, 2006, but declined to submit any responsive information within 30 days after receipt of the FORM. I was assigned the case on May 22, 2006.

FINDINGS OF FACT

Applicant's admissions to three of the four allegations set forth in the SOR are incorporated herein.⁽²⁾ After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 44 years old and works as a senior engineer scientist for a defense contractor. He has been employed by his current employer since June 1984, a month after receiving his college degree. He is single and has no children.

As a college freshman in 1980, Applicant began experimenting with marijuana. It then "became a habit."⁽³⁾ He smoked marijuana about two times a week with friends. Additionally, he purchased about one ounce of the substance a year for personal use. He did not sell marijuana or any other drugs during this time period. His use continued during a summer term working for a military warfare station,⁽⁴⁾ through his college graduation in May 1984, and into the first couple of years of his current employment. By 1986 or 1987, his marijuana abuse decreased and was usually limited to smoking the drug at parties or in collegiate housing.

Beginning about 1987 and continuing through the 1990s, Applicant's use of marijuana further decreased to about once a month. Although he no longer purchased marijuana, he continued to use it at parties, at the homes of friends, and on vacation. It was mainly used when he was with a particular circle of friends. He attributes this reduction to his growing older.

By 2000, his use of the drug was reduced to about twice a year. It was then consumed while on camping and fishing trips with his circle of friends. He attributes this further reduction to the aging of his friends and social changes. When he made his statement to Office of Personnel Management (OPM) investigators in November 2004, he noted that the last time he had not used marijuana since sometime in June 2004; his November 2005 response to the SOR points to that same month as being the last time he used the drug.

Other than becoming an issue during this security clearance process, marijuana abuse has not caused him any problems in his professional, educational, or social life. He has not received any substance abuse counseling or education, nor does he believe he is drug dependent. While not well known, his use of marijuana is known among his immediate friends and possibly his brothers. With regard to his future use of the substance, Applicant has made two statements. In November 2004, he stated: "I cannot say that I would not use marijuana again if the situation was right. I feel that it is more experimental now than before to see if it's [sic] use will still generate the same effects as my earlier years."⁽⁵⁾ A year later, in November 2005, he commented that in the preceding year, he had told the investigator "that I may use

marijuana in the future. If asked that question today, I would say that it would be unlikely that I would use marijuana in the future."⁽⁶⁾

There is no other indication as to whether he made a concerted effort to quit or whether he continues to have access to the substance through his friends.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these 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. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁷⁾ The government has the burden of proving controverted facts.⁽⁸⁾ The burden of proof is something less than a preponderance of evidence.⁽⁹⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.⁽¹⁰⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹¹⁾

No one has a right to a security clearance⁽¹²⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹³⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹⁴⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹⁵⁾ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of

the facts in this case:

Guideline H - Drug Involvement. *The Concern:* 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. [\(16\)](#)

That guideline continues with the following definitions:

Drugs are defined as mood and behavior-altering substances, and include: [\(17\)](#) **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); and** [\(18\)](#) **[i]nhalants and other similar substances.** [\(19\)](#) **Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.** [\(20\)](#)

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

Finally, consideration must be given to 10 U.S.C. 986. Under that statute, any person who is an unlawful user of, or is addicted to, a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), is disqualified from being granted a security clearance.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all legal precepts, factors, and conditions, I find the following with respect to the allegations set forth in the SOR:

With respect to Guideline H (Drug Involvement), the Government has established its case. Applicant admits that he illegally used marijuana for 25 years and, from 1980 to approximately 1986 or 1987, purchased marijuana for personal consumption. Such facts raise security concerns with regard to Drug Involvement Disqualifying Conditions (DI DC)

E2.A8.1.2.1 (*[a]ny drug abuse*) ⁽²¹⁾

and DI DC E2.A8.1.2.2 (*[i]llegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*).

When the Government's initial burden has been met and disqualifying conditions raised, the burden shifts to the Applicant to go forward with evidence in rebuttal, explanation, or mitigation which is sufficient to overcome or outweigh the Government's case. Although the facts indicate that Applicant was never dependent on, or a "hardcore" abuser of, marijuana, the fact remains he abused the drug from his college days to the summer of 2004. Inasmuch as his last usage was slightly less than two years ago, Drug Involvement Mitigating Condition (DI MC) E2.A8.1.3.1 (*[t]he drug involvement was not recent*) does not apply. On the other hand, he is not currently an unlawful user of marijuana and there is no evidence that he is addicted to the substance. Therefore, 10 U.S.C. 986 does not automatically disqualify Applicant from consideration for a security clearance. Consequently, I find subparagraph 1.d of the SOR in Applicant's favor.

As a college student, Applicant's abuse of marijuana was a regular habit. Overtime his abuse lessened. Although it became less frequent, it continued to have some social link with a particular group of friends. Their use continued into middle age during camping and fishing trips. Consequently, DI MC E2.A8.1.3.2 (*[t]he drug involvement was an isolated or aberrational event*) does not apply.

Applicant's intentions with regard to his future use of marijuana are of particular concern. The facts do not indicate that Applicant intentionally sought out to reduce, then stop, smoking marijuana. To the contrary, inasmuch as he had ceased purchasing the drug, and was therefore dependent on smoking his friends' marijuana, it appears that his decline in use coincided, instead, with a decline in the opportunity to smoke marijuana. Indeed, when asked about his intentions regarding future use of the drug, he answered: "Today, I would say it is unlikely that I would use marijuana in the future." ⁽²²⁾ Such language fails to clearly demonstrate an intent *not* to abuse marijuana in the future, and two years of abstinence is too brief a time to demonstrate Applicant's true resolve, reliability, and suitability for gaining access to this nation's sensitive information, especially after 24 years of abuse. ⁽²³⁾ Consequently, DI MC E2.A8.1.3.3 (*[a] demonstrated intent not to abuse any drugs in the future*) does not apply.

Overtime, Applicant reduced his abuse of marijuana, then stopped smoking the drug. He did so, however, without undergoing a prescribed drug treatment program. Therefore, DI MC E2.A8.1.3.4 (*[s]atisfactory 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*) cannot apply. ⁽²⁴⁾

I have considered both the record evidence and Applicant in light of the "whole person" concept. Applicant is a mature professional whose collegiate experimentation with marijuana turned into a habit. As he and his peers grew older and grew apart, his abuse of the drug diminished until it only became a staple for their occasional outdoor escapes from work, families, and responsibilities. Were it not for his lack of education on substance abuse and his inability to flatly,

unequivocally state he will not abuse drugs in the future, security concerns arising from his history of drug involvement might be put to rest. As it is, however, with only two years of abstinence, Applicant still feels the need to an option of returning to his past abuse. (25) The degree of trust required to receive a security clearance demands more assurance of total abstinence, and the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials. Consequently, Guideline H is decided against Applicant. (26)

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.2.5 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: 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 a security clearance for Applicant. Clearance is denied.

Arthur E. Marshall, Jr.

Administrative Judge

1. ⁰ The Government submitted 6 items in support of its case.
2. Applicant has admitted to SOR subparagraphs 1.a ("From 1980 to the present, you have used marijuana with varying frequency"), 1.b. ("You may continue to use marijuana in the future", and 1.c. ("You have purchased marijuana for your personal use"). He denied subparagraph 1.d., which alleged that pursuant to 1.a. and 1.b., 10 U.S.C. 986 disqualifies him from having a security clearance granted or renewed because he is an unlawful user of, or is addicted to, a controlled substance, as defined at 21 U.S.C. 802.
3. Government Item 5 (Applicant's Statement, dated November 2, 2004, to a special investigator for the Office of Personnel Management Investigations Service).
4. The Government finds it particularly troubling that Applicant's marijuana abuse probably continued during this summer employment, although it does concede Applicant apparently did not have or need a security clearance for the work he was doing. FORM, dated March 15, 2006, at 4.
5. Government Item 5, *supra*, footnote 2 at 3.
6. Government Item 3 (Applicant's Answer to the SOR, dated November 4, 2005).
7. ISCR Case No. 96-0277 at 2 (App Bd Jul 11, 1997).
8. ISCR Case No. 97-0016 at 3 (App Bd Dec 31, 1997), Directive, Enclosure 3, ¶ E3.1.14.
9. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
10. ISCR Case No. 94-1075 at 3-4 (App Bd Aug 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
11. ISCR Case No. 93-1390 at 7-8 (App Bd Jan 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
12. *Egan*, 484 U.S. at 531.
13. *Id.*
14. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
15. Executive Order 10865 § 7.
16. **Directive, Enclosure 2, ¶ E2.A8.1.1.1.**
17. **Directive, Enclosure 2, ¶ E2.A8.1.1.2.**
18. *Id.* at ¶ E2.A8.1.1.2.1.
19. *Id.* at ¶ E2.A8.1.1.2.2.
20. *Id.* at ¶ E2.A8.1.1.3.

21. As noted *supra*, footnote 19, "drug abuse" is defined as the "illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction." Marijuana is a drug. See ¶ E2.A8.1.1.2.1, *supra*, footnote 17.

22. Government Item 3, *supra*, footnote 5.

23. This is particularly true in the absence of some form of substance abuse treatment or education.

24. Consideration of this mitigating condition is not intended to be an indication that Applicant's past abuse of marijuana necessarily warrants or warranted a prescribed drug treatment program.

25. At Applicant's request, this proceeding is based on the written record. As such, it is impossible to question or probe to discern how unlikely he is to return to marijuana in the future, and this quotation was made without elaboration. Therefore, the Directive, which states that any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information, must control based solely on the written, unelaborated word.

26. I find, however, SOR subparagraph 1.d in Applicant's favor. There is no indication that Applicant is currently

an unlawful user of, or addicted to, marijuana, or that he has used the substance since June 2002.