

DATE: October 23, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-03948

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR.

APPEARANCES

FOR GOVERNMENT

J. Theodore Hammer, Jr., Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant used marijuana approximately 15 times from fall 1997 to August 2004, and approximately seven times from April 2004 to August 2004 while he held a clearance. He falsified his September 2000 and February 2002 clearance applications by wilfully concealing this drug history. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 22 July 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of drug involvement and personal conduct. [\(1\)](#) He answered the SOR 19 August 2005, and requested a hearing. DOHA assigned the case to me 20 April 2006, and I heard it 13 September 2006. DOHA received the transcript 21 September 2006.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR, except for the falsification allegation of subparagraph 2.b., which he denied on the grounds that he was not involved in the submission of that clearance application. Accordingly, I incorporate his admissions as findings of fact. He is a 28-year-old contract negotiator employed by a defense contractor since May 2000. He seeks to retain the clearance he has held since approximately 2001.

When Applicant first applied for a clearance in September 2000 (G.E. 1), he deliberately concealed his marijuana abuse between January 1997 and May 2000 (question 27). He knew he had used marijuana while in college, but did not think his infrequent use of marijuana had to be reported--despite the clear language of the question.

In early 2002, Applicant's company nominated him for a higher clearance. In February 2002, Applicant executed a second clearance application (G.E. 2) [\(2\)](#) to begin the required background investigation. The application contained the same false answer to question 27 as his first application. Applicant has stated (Answer, Tr. 61-62) that he was not aware that he had been nominated for the higher clearance until he received notice that it was granted in July 2003. This

statement is incredible because Applicant signed the application and because he was interviewed by an investigator from the Defense Security Service (DSS) in 2003, a required part of the investigation for higher clearance. He variously claimed that he must have signed the second application without reviewing it (Tr. 62, 80).

Applicant did not disclose his drug history to the DSS investigator during the 2003 interview. He claims that although the investigator asked him specifically about a criminal charge he had listed on his clearance application, he does not remember if the investigator went over the drug questions, or any of the other questions on the application (Tr. 80-82).
(3)

In 2004, Applicant's company nominated him for special access to work on contracts for a non-DoD client. In September 2004, Applicant completed a third clearance application (G.E. 3) on which he disclosed that he had used marijuana 15 times from January 1997 to July 2004 (question 27) and that he had used marijuana seven times between April and August 2004 while possessing a clearance (question 28). During this time, Applicant was on a sabbatical from his company, fulfilling a life-long dream to hike the Appalachian Trail. Although he was traveling alone, he frequently camped for the night with other hikers, and used marijuana offered to him while sitting around a campfire. He also used marijuana on one occasion later that summer while visiting friends in California.

Applicant claims that he reported his drug use on this application because he now understood the importance of the drug questions and wanted to make a clean breast of things (Answer). He emphatically denied disclosing the drugs because he knew he would be subjected to a polygraph for this special access (Tr. 88), even though this claim is directly contradicted by his own recorded statement (A.E. C) and the testimony of a company investigator reporting statements made by Applicant to him (Tr. 34).
(4)

Applicant has an excellent work record (A.E. B). His character reference, a life-long friend of his family, gives him high marks for integrity (A.E. A).
(5)

POLICIES AND BURDEN OF PROOF

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline H (Drug Involvement) and Guideline E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.
(6)

CONCLUSIONS

The government established a case for disqualification under Guideline H,
(7) and Applicant did not mitigate the security concerns. Although his use of marijuana in college might be viewed as experimental, his resumption of marijuana use

while cleared raises additional security concerns. (8) Further, he does not meet any of the mitigating conditions for drug involvement. His use was recent, (9) and was neither isolated nor aberrational, (10) His stated intention to refrain from drug use in the future falls short of the required demonstrated intent, (11) given his resumption of drug use after being cleared. I cannot conclude Applicant is unlikely to use illegal drugs in the future. Accordingly, I resolve Guideline H against Applicant.

The government established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns. He deliberately concealed his drug history from the government, at a time when he had stopped using marijuana only a few months. (12) He intended to conceal this information from the government and likely intended to keep it from his employer. He repeated the falsification in his February 2002 clearance. Applicant signed the application, clearly understanding that it would be forwarded. Even if I accept his claim that he signed it without re-reading it, he remains responsible for its accuracy. Further, he did not disclose his drug history when he was interviewed on his clearance in 2003. Not until he completed a third clearance application in September 2004 did he fully disclose his drug history, and only then because he knew that he would be subject to a counter-intelligence and lifestyle polygraph by the sponsoring agency. The disclosure was neither prompt nor good-faith within the meaning of the mitigating conditions.

Applicant's conduct demonstrates a lack of candor required of cleared personnel. The government has an interest in examining all relevant and material adverse information about an Applicant before making a clearance decision. The government relies on applicants to truthfully disclose that adverse information. Further, an applicant's willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the government relies on in order to perform damage assessments and limit the compromise of classified information. Applicant's conduct suggests he is willing to put his personal needs ahead of legitimate government interests. I resolve Guideline E against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline H: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Paragraph 1. Guideline E: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph 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 denied.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. It is undisputed that G.E. 1 and G.E. 2 are identical in content, differing only in their computer-generated date/time stamps.
3. However, it would be extremely unusual for the investigator to omit asking the Applicant to review his application for errors before beginning the interview.

4. The investigator was looking into allegations made by Applicant concerning the company's handling of the privacy portions of Applicant's third clearance application. Those allegations and that investigation are not at issue in this hearing.

5. However, while the character reference was aware of the SOR issues when he provided Applicant a written reference (A.E. A) for the hearing, he does not appear to have been aware of those issues when he gave essentially the same reference as part of Applicant's Answer to the SOR.

6. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).

7. E2.A8.1.2.1. Any drug abuse. . .;

8. E2.A8.1.2.5. . . .Recent drug involvement, especially following the granting of a security clearance, . . . will almost invariably result in an unfavorable determination.

9. E2.A8.1.3.1. The drug involvement was not recent;

10. E2.A8.1.3.2. The drug involvement was an isolated or aberrational event;

11. E2.A8.1.3.3. A demonstrated intent not to abuse any drugs in the future;

12. 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, . . . [or] determine security clearance eligibility or trustworthiness. . .;