

KEYWORD: Drugs, Personal Conduct

DIGEST: Applicant is a 43-year-old defense contract employee. He has a history of illegal drug use. In 1998, he was convicted for driving under the influence. Applicant did not receive treatment for his marijuana or cocaine use, and he used drugs while he had a security clearance. He did not mitigate the security concerns arising from his drug involvement and related personal conduct. Clearance is denied.

CASENO: 05-04309.h1

DATE: 04/28/2006

DATE: April 28, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-04309

DECISION OF ADMINISTRATIVE JUDGE

NOREEN A. LYNCH

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 43-year-old defense contract employee. He has a history of illegal drug use. In 1998, he was convicted for driving under the influence. Applicant did not receive treatment for his marijuana or cocaine use, and he used drugs while he had a security clearance. He did not mitigate the security concerns arising from his drug involvement and related personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On October 28, 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, because of security concerns arising under Guideline H (Drug Involvement) and Guideline E (Personal Conduct).

In a sworn written statement, dated November 4, 2005, Applicant responded to the allegations in the SOR. He 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 18, 2005. Department Counsel provided a complete copy of the file of relevant material (FORM) ⁽¹⁾ to Applicant, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on February 8, 2006. Applicant did not submit additional information. The case was assigned to me on March

28, 2006.

FINDINGS OF FACT

Applicant admitted the factual allegations pertaining to drug involvement under Guideline H (subparagraphs 1.a. through 1.k) and personal conduct under Guideline E (subparagraphs 2.a. and 2.b) of the SOR. Those admissions are incorporated as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant is a married (one child), 43-year-old employee of a defense contractor seeking to obtain a security clearance. On April 12, 2004, he submitted his security clearance application.⁽²⁾ In 1997, Applicant received a confidential clearance.⁽³⁾

Applicant began using marijuana on a daily basis when he was 14 or 15 years old in high school. As he became older, his use slowed to approximately two to three times per year. Since 1997, Applicant used marijuana approximately 21 times. His last reported use is 2004. Applicant used marijuana mainly at parties, and is still in contact with those friends. He has never attended treatment or counseling for marijuana. He also sold marijuana until 1985.⁽⁴⁾

Applicant began using cocaine in 1979 or 1980, while in high school. His reported use is three to five times per year. He also purchased cocaine with friends. He used it at least once after completing the security clearance application (SF 86) in 2002. He feels guilty after engaging in the drug use, but has not completed any treatment. He sold cocaine infrequently until 1983.⁽⁵⁾

His wife and friends are aware of his drug use. He reports no impact on his professional or personal life because of the use.

Applicant started using alcohol when he was 11 or 12 years of age. He became intoxicated on a daily basis. His grandfather gave him alcohol to drink in high school. Later on, he became intoxicated on 25 weekends or when going to parties. He drove under the influence of alcohol on a regular basis until 1998, but does not consider alcohol a problem in his life.⁽⁶⁾

In 1988, Applicant was convicted of driving under the influence. He was found guilty and sent to jail for two days and fined \$530.00.⁽⁷⁾ His license was suspended for three months, and he was placed on unsupervised probation for 12 months and ordered to attend an alcohol awareness class.

He attended several Alcoholics Anonymous (AA) classes during the probation in 1999. He did not feel it helped him at all and he stopped attending.⁽⁸⁾

Applicant has an extensive history with illegal drugs by his own admission. He admits use, purchase, and sale of marijuana and cocaine. His drug use spans a period of almost thirty years beginning in 1977 until 2004. Applicant abstained for certain periods of time during the years.⁽⁹⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to 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 E.2.2, 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 to 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. Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interest of national security.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines pertinent to an evaluation of the facts of this case:

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 the person may not properly safeguard classified information.

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.

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.⁽¹⁰⁾ 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.⁽¹¹⁾

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. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of national security.⁽¹²⁾

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of the 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 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, I conclude the following with respect to each allegation set forth in the SOR.

Personal Conduct

The government established its case under Guideline E Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.1 (*reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*). Applicant presented no information to mitigate the personal conduct concern. He does not deny his illegal drug involvement and believes it has no impact on his life. He admits intoxication from alcohol for many years. In 1998, he was convicted for driving under the influence. After attending a few AA classes, he stopped because he believed it did not help him. He used drugs while he had a security clearance for many years. I conclude the substantial evidence is reliable and shows highly questionable judgment and unwillingness to comply with the law.

I considered all the personal conduct mitigating conditions, especially PC MC E2.A5.1.3.5 (the individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress) and find none apply in this case. Allegations under Guideline E are against applicant.

Drug Involvement

Applicant's record is replete with experimental illegal drug use by his own admission. (DI DC) E2.A8.1.2.1 (*any drug abuse*) applies. (DI DC) E2.A8.1.2.2 (*Illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution*) applies by his own admissions. (DI DC) E2.A8.1.2.3 (*diagnosis by a credentialed medical professional*) does not apply in this case because there is no information in the record to support a diagnosis.

From 1977 until at least 2004, Applicant was involved with illegal drugs. Drug Involvement Mitigating Conditions (DI MC) E2.A8.1.3.1 (*the drug involvement was not recent*) and (DI MC) E2.A8.1.3.2 (*the drug involvement was an isolated or aberrational event*) do not apply. Applicant ended his written responses to the SOR with the statement, "I do not intend future use." Given his history and disregard for rules, I do not find this credible. (DI MC) E2.A8.1.3.3 (*a demonstrated intent not to abuse any drugs in the future*) does not apply. (DI MC) E2.A8.1.3.4 (*satisfactory completion of a prescribed drug treatment program, including rehabilitation and after care requirement, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional*) does not apply. Applicant did not receive any

alcohol or drug treatment, and more importantly, believes his life has not been impacted in any way..

Applicant asserts his drug use was experimental and a result of youthful indiscretions. He also noted this occurred many years ago, including a time in the late 1990's when he had a confidential security clearance. His marijuana use continued until 2003. Applicant is now a mature man. Considering all the evidence in this case, I find Applicant has failed to overcome the drug involvement concerns in the SOR. Accordingly, allegations 1.a through 1.k of the SOR are concluded against Applicant.

I carefully considered all the circumstances in light of the "whole person concept." I conclude Applicant is not eligible for 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 APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.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.

Noreen A. Lynch

Administrative Judge

1. The government submitted seven items in support of its contentions.
2. Item 4 (Applicant's Security Clearance Application (SF 86), dated April 12, 2004) at 1.
3. *Id.* at 4.
4. Item 6 (Applicant's Affidavit, dated October 8, 2004) at 1-2.
5. *Id.* at 2.
6. Item 3 (Applicant's Answer, dated November 4, 2005) at 3.
7. *Id.* at 4-5.
8. *Id.* at 7-8.

9. *Id.* at 10-13.

10. ISCR Case No. 96-0277 (July 11, 1997) at 2.

11. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, Para E3.1.15.

12. Directive, Enclosure 2, Para. E2.2.2