

KEYWORD: Drugs

DIGEST: Applicant's abuse of marijuana from March 1996 to December 2003, and LSD from March 1996 to January 2004, was not mitigated where Applicant's drug use was recent, was not isolated, and where the record evidence was insufficient to demonstrate an intent to refrain from illegal drug use in the future. Clearance denied.

CASENO: 05-04339.h1

DATE: 02/02/2006

DATE: February 2, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-04339

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's abuse of marijuana from March 1996 to December 2003, and LSD from March 1996 to January 2004, was not mitigated where Applicant's drug use was recent, was not isolated, and where the record evidence was insufficient to demonstrate an intent to refrain from illegal drug use in the future. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 2 August 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of illegal drug use [\(1\)](#). He answered the SOR 23 August 2005, and requested a decision without hearing. He did not respond to DOHA's 20 September 2005 File of Relevant Material (FORM). The record closed 23 October 2005, when his response was due. DOHA assigned the case to me 7 November 2005.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR; accordingly, I incorporate the admissions as findings of fact.

Applicant--a 24-year-old software engineer employed by a defense contractor since May 2004--seeks access to classified information. He has not previously held a clearance.

When Applicant completed his clearance application in May 2004, he reported use of several illegal drugs within the last seven years (question 27). He reported using marijuana approximately 30 times between March 1996 and the present. He reported using LSD approximately 20 times between March 1996 and December 2001, and once in January 2004. He reported using absinthe twice between January 2002 and June 2003, cocaine once in approximately 2002, ecstasy four times between June 2000 and June 2002, and hallucinogenic mushrooms once between June and December 2001. He detailed the circumstances of his drug use in a December 2004 statement. Generally, he reported that the various drugs impaired his judgment. He disclosed that he bought user amounts of the drugs he used, except for cocaine, which was given to him. Most of his drug use occurred in high school or college social settings with friends. However, the cocaine was given to him at a "goth" party by someone he did not know, and on two of the occasions in which he used ecstasy, he bought the drug at "rave" parties from strangers.

In his December 2004 sworn statement, he stated his intent to not use drugs in the future, a commitment he repeated in his answer to the SOR. The record contains no information on his character or work record.

POLICIES

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 guideline is Guideline H (Drug Involvement).

BURDEN OF PROOF

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.⁽²⁾

CONCLUSIONS

The government has established its case under Guideline H, and the Applicant has not mitigated the conduct. Applicant was a recreational user of marijuana from approximately March 1996 to at least December 2003,⁽³⁾ and a recreational user of LSD from approximately March 1996 to at least January 2004.⁽⁴⁾ Between 2000 and 2002, he experimented with ecstasy, hallucinogenic mushrooms, and cocaine. Contemporaneously with his illegal drug use, he purchased them for his personal use. Clearly, the illegality of the conduct did not affect Applicant's decision to use illegal drugs.

Applicant meets none of the mitigating conditions for drug involvement. His drug use is recent, ending--at best four months before he applied for his clearance.⁽⁵⁾ His drug use was not isolated or aberrational.⁽⁶⁾ Although his use of cocaine, hallucinogenic mushrooms, and ecstasy was experimental, the span of experimentation was not isolated. Further, taken in conjunction with the eight-year span of LSD and marijuana use, Applicant's drug abuse is neither isolated nor aberrational. He has not demonstrated an intent to refrain from drug use in the future.⁽⁷⁾ While he has stated an intent to remain drug free, the record contains little beyond this statement to confirm an intent to refrain from illegal drug use. Simply put, the Applicant has the burden of demonstrating this intent and has provided no evidence to rebut the unfavorable inferences of his eight years of drug abuse. Accordingly, I resolve Guideline H. against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline H: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: Against the 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 Grattan Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
3. Although a straightforward reading of his clearance application suggests he used marijuana as late as May 2004.
4. 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.

- E2.A8.1.2.1. Any drug abuse (see above definition); E2.A8.1.2.2. Illegal drug possession, including . . . purchase,
5. E2.A8.1.3.1. The drug involvement was not recent;
 6. E2.A8.1.3.2. The drug involvement was an isolated or aberrational event;
 7. E2.A8.1.3.3. A demonstrated intent not to abuse any drugs in the future;