

KEYWORD: Drugs

DIGEST: Applicant used marijuana approximately 40 times while in college and once after completing his security clearance application and being informed of the contractor's anti-drug policies. Applicant failed to mitigate drug involvement security concerns. Clearance is denied.

CASE NO: 05-04831.h1

DATE: 05/11/2006

DATE: May 11, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-04831

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Ray T. Blank Jr., Esq., Department Counsel

## **FOR APPLICANT**

Jeffrey J. Harradine, Esq.

### **SYNOPSIS**

Applicant used marijuana approximately 40 times while in college and once after completing his security clearance application and being informed of the contractor's anti-drug policies. Applicant failed to mitigate drug involvement security concerns. Clearance is denied.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1960), as amended, DOHA issued a Statement of Reasons (SOR) on 12 October 2005 detailing the basis for its decision-security concerns raised under Guideline H (Drug Involvement) of the Directive. Applicant answered the SOR in writing on 19 December 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on 30 January 2006. On 24 March 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 31 March 2006.

### **FINDINGS OF FACT**

Applicant is a 24-year-old mechanical engineering honors graduate of an elite university. He was employed as a mechanical engineer for a defense contractor from 12 July 2004 until his separation on 31 January 2006.<sup>(1)</sup>

When Applicant first joined the defense contractor, he was advised of the contractor's policy against any illegal drug use. Tr. 23. On 13 July 2004, Applicant completed a security clearance application (SCA) in which he admitted using marijuana approximately 40 times between December 2001 and 1 January 2004. Ex. 1 at 6. He used the marijuana in the

group house in which he lived while he was attending college. Ex. 2 at 1. "One of the students that lived there was the procurer of the marijuana. We had to pay him for the marijuana that we used." *Id.* Applicant stated in the SCA that he had no intention of using marijuana ever again. Ex. 1 at 6.

On 28 January 2005, Applicant completed a signed, sworn statement for an agent of the Office of Personnel Management in which he admitted smoking marijuana one week previously. He had visited his college and was asked by others if he wanted to smoke marijuana. He agreed to do so and smoked it through a water pipe. He did so with "different, older, friends," not the friends with whom he had previously used. Ex. 2 at 4. Applicant admitted that he was aware that use of marijuana was illegal but believes "[he] should be able to do anything in [his] own home, as long as [he does] not affect anyone else, without the Government interfering with [his] personal freedom." *Id.* Applicant claimed he did "not intend to use any marijuana again." *Id.* at 3.

Applicant submitted an affidavit from a co-worker who states that Applicant worked on sensitive projects, always complied with security guidelines and restrictions, and was conscientious about information security. He opined that Applicant was reliable and trustworthy.

Applicant sought an evaluation from a licensed clinical psychologist specializing in substance abuse and dependence. The psychologist found Applicant presented "no characteristics associated with psychogenic drug addiction." Ex. B at 2. He believes there is a low risk Applicant will resume his "past drug experimentation." *Id.* He "could detect no indications that [Applicant] is abnormally susceptible to undue influence or coercion from an outside source as the result of his past drug experimentation." *Id.*

## POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Jan. 6, 1993). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and

mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

## CONCLUSIONS

In the SOR, DOHA alleged Applicant used marijuana from December 2001 to at least January 2005 (¶ 1.a), continued to use marijuana after completing his SCA in July 2004, and purchased marijuana during the period from December 2001 to January 2004 (¶ 1.c). In his answer, Applicant denied each of the allegations, with explanation. The improper or illegal involvement with drugs raises questions regarding an applicant'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. Directive ¶ E2.A8.1.1.

The Government's evidence established each of the allegations. Potentially disqualifying security concerns may be raised by an applicant's drug abuse, including the illegal use of marijuana (DC E2.A8.1.2.1) or the illegal purchase of marijuana (DC E2.A8.1.2.2). Applicant admits using marijuana. In his signed, sworn statement Applicant claimed "we had to pay [the procurer] for the marijuana." At the hearing, Applicant asserted others in the house in which he lived had to pay for it, and they shared it with him. Tr. 16. I did not find his hearing testimony persuasive. I conclude he purchased marijuana.

Applicant's evidence raises two potentially mitigating conditions: (1) his drug involvement was not recent (MC E2.A8.1.3.1); and (2) a demonstrated intent not to abuse any drugs in the future (MC E2.A8.1.3.3). Applicant has the duty of establishing mitigating conditions. I conclude he failed to meet his burden. His drug abuse was recent. Although his last admitted use was some 14 months ago, it happened after he completed his SCA and with full knowledge of the deep concern the government attached to illegal drug use. Applicant is a smart well-educated individual who knew of his employer's and the government's concern about the use of illegal drugs such as marijuana. Nevertheless, he decided he was away from work and with friends he respected, so he could use the marijuana. I considered all the evidence and paid particular attention to Applicant's testimony. I did not find his claim of future abstinence persuasive. I find against Applicant.

## FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline H: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

### **DECISION**

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

JAMES A. YOUNG

Administrative Judge

1. On the day of the hearing, 24 March 2006, Applicant's employer mailed to DOHA notice that Applicant had been "separated" from employment on 31 January 2006. DISCR Operating Instruction 29 ¶ 1.F (May 19, 1986) provides that if a hearing has already been held, the case will be processed through appeal despite termination of the applicant's employment. It is not clear from the OI whether continued processing of the case is appropriate when the applicant was terminated before the hearing but neither the Government nor the administrative judge were so apprised.