

KEYWORD: Drugs; Criminal Conduct; Personal Conduct

DIGEST: In September 2004, Applicant used marijuana for which he was arrested. He has failed to mitigate the trustworthiness concerns and his eligibility for assignment to sensitive positions is denied.

CASENO: 05-07943.h1

DATE: 05/31/2006

DATE: May 31, 2006

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In re:

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SSN: -----

Applicant for Trustworthiness Determination

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ADP Case No. 05-07943

**DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

**APPEARANCES**

**FOR GOVERNMENT**

Ray T. Blank, Jr., Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

In September 2004, Applicant used marijuana for which he was arrested. He has failed to mitigate the trustworthiness concerns and his eligibility for assignment to sensitive positions is denied.

### STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant an application for a trustworthiness determination under Department of Defense Regulation 5200.2-R, *Personnel Security Program*, (Jan. 1987), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive").<sup>(1)</sup> On December 23, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleged trustworthiness concerns under Guideline H (drug involvement), Guideline J (criminal conduct), and Guideline E (personal conduct).

On January 5, 2006, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. On March 14, 2006, Applicant received a complete copy of the government's file of relevant material (FORM) dated March 7, 2006. Applicant was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. On April 13, 2006, Applicant's response to the FORM was due. No response has been received. On May 1, 2005, I was assigned the case.

### FINDINGS OF FACT

The SOR alleges security concerns under the Guidelines for Drug Involvement, Criminal Conduct, and Personal Conduct. Applicant's admissions to the allegations in the SOR, are incorporated herein. After a thorough review of the entire record, I make the following findings of fact:

Applicant is 30 years old and has worked as a technical assistant for a defense contractor since August 2000. In March 2004, Applicant submitted a Public Trust Position Application.

In August 2004, Applicant separated from his spouse. In September 2004, Applicant-- then 28 years old--received a marijuana "blunt," which is slightly larger than a marijuana cigarette (Item 5), from a friend. After smoking the marijuana at a hotel, the police arrived. He was taken to the police station, processed, released, and received a summons in the mail. He was charged with violation of controlled substance/drug/device and cosmetic act. In a November 2004 sworn statement (Item 5), Applicant states he did not tell his spouse or family about the incident because he was embarrassed. In his January 2006 answer to the SOR, he denied embarrassment was the reason for not telling them, but provided no additional reason for his decision not to tell his spouse or family. There is no evidence his spouse and family were ever informed of his arrest.

In October 2005, Applicant was placed in the Accelerated Rehabilitative Disposition (ARD) program, which required supervision by the county probation and parole office. Upon successful completion of the program the charge would be dropped. In December 2005, he was notified by the probation and parole office that if he paid \$75, he would be dismissed from the ARD program and the charges against him dismissed.

His prior use of marijuana had occurred when he was a teenager and during his early 20's, Applicant used marijuana once or twice a year at parties, due to peer pressure. In his November 2004 sworn statement, Applicant asserts he will refrain from future use of marijuana.

## **POLICIES**

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in DoD 5200.2-R. 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."<sup>(2)</sup> To be eligible to occupy an Information Systems Position designated ADP II/III, an applicant must meet the security guidelines contained in the Regulation. The standard that must be met is that based on all available information, the person's loyalty, reliability, and trustworthiness are such that assigning the person to sensitive

duties is clearly consistent with the interests of national security." <sup>(3)</sup> The Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. <sup>(4)</sup> Considering the evidence as a whole, I conclude the relevant guidelines to be applied here are drug involvement, criminal conduct, and personal conduct.

DoD contractor personnel are afforded the rights to the procedures contained in the DoD Directive before any final unfavorable access determination may be made. <sup>(5)</sup> Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information. <sup>(6)</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts. <sup>(7)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." <sup>(8)</sup> "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability." <sup>(9)</sup> "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." <sup>(10)</sup>

Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Regulation, Appendix 8. A person granted access to classified information enters into a special relationship with the government. 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. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. <sup>(11)</sup> 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.

## CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline H, drug involvement. Under drug involvement, the security eligibility of an applicant is placed into question when that applicant is involved with illegal drugs. 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. Applicant used marijuana in his late teens, his early 20's, and in September 2004 his use lead to arrest. Disqualifying Condition (DC) 1 (*Any drug abuse*) applies.

Applicant last used marijuana in September 2004 after having submitted a Public Trust Position Application in March 2004. This was a stupid thing to do. None of the Mitigating Condition apply. His last usage was recent so Mitigating Condition (MC) 1 (*The drug involvement was not recent*) does not apply. He used marijuana in his late teens, his early 20's, and at age 28. His usage was not isolated or an aberrational event. Therefore, MC2 (*The drug involvement was an*

*isolated or aberrational event*) does not apply. Applicant says he will not use marijuana or any other illegal drug again. He has stated an intent to refrain from future usage, but the record is insufficient to establish a demonstrated intent not to use again. MC3 (*A demonstrated intent not to abuse any drugs in the future*) does not apply.

There is no evidence of any drug treatment program so MC 4 (*Satisfactory 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*) does not apply.

Because his failure to reveal his arrest to his spouse and family is a personal conduct concern not a drug involvement concern, I find for him as to SOR paragraph 1.d. I find against Applicant on the other drug related paragraphs and as to drug involvement.

The Government has satisfied its initial burden of proof under criminal conduct, Guideline J. Under criminal conduct, the security eligibility of an applicant is placed into question when that applicant is shown to have a history or pattern of criminal activity creating doubt about his judgment, reliability, and trustworthiness. Willingness to abide by rules is an essential qualification for eligibility for access to the nation's secrets. A history of illegal behavior indicates an individual may be inclined to break the rules. Applicant was arrested for marijuana possession in September 2004 and illegally used marijuana at other times which violates the law. DC 1 (*Allegations or admission of criminal conduct, regardless of whether the person was formally charged*) applies.

None of the mitigating conditions (MC) apply. MC 1(*The criminal behavior is not recent*) does not apply because his most recent arrest occurred in September 2004, which is less than two years ago and is considered recent criminal behavior. MC 2 (*The crime was an isolated incident*) does not apply because there was only one arrest but his illegal conduct, i.e., marijuana usage, occurred repeatedly, and therefore, his criminal behavior was not an isolated incident. MC 3 (*The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life*) and 4 (*The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur*) do not apply. Applicant's earlier marijuana usage was due to peer pressure and he states his most recent was due to family problems. There is no evidence he is no longer subject to peer pressure, that his family problems have been resolved, or family problems will not recur in the future. Under the circumstances, he failed to convince me his illegal drug use would not recur.

MC 5 (*Acquittal*) is inapplicable. MC6 (*There is clear evidence of successful rehabilitation*) does not apply because the record does not establish clear evidence of successful rehabilitation. I find against the Applicant as to criminal conduct.

The Government has satisfied its initial burden of proof under guideline E, personal conduct. Under personal conduct the security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal conduct which creates doubt about the person's judgment, reliability, and trustworthiness. Complete honesty

and candor on the part of applicants for access to classified information is essential to make an accurate and meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security.

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Following his arrest for marijuana possession, Applicant failed to disclose his arrest to his spouse and family. DC 4 (*Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail*) applies. Over a number of years Applicant used marijuana which is a pattern of rule violation, which makes DC5 (*A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency*) apply.

Applicant has not told his spouse or family about his arrest. Initially, in his November 2004 sworn statement, he says this was due to embarrassment. In his January 2006 answer to the SOR, he says it was not due to embarrassment. The question is not why he failed to reveal the arrest, but the fact he has failed to do so. As of January 2006, Applicant still had not told his wife or family of his arrest. This failure to inform his spouse and family is troubling. Not only did he fail to tell them about the initial arrest when it occurred, but failed to tell them when he went to court, when he was placed in the ARD program, when he was under the supervision of the country probation and parole office, and even after he had completed the ARD program.

None of the mitigating factors relating to personal conduct apply. I find against Applicant as to personal conduct.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Drug Involvement: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: For Applicant

Paragraph 2 Criminal Conduct: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Paragraph 3 Personal Conduct: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

### **DECISION**

In light of all the evidence presented in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

**Claude R. Heiny**

**Administrative Judge**

**HEINY**

ADMINISTRATIVE JUDGE

**CASE INFORMATION FORM**

(Effective: May 1, 1996)

NAME OF CASE (LAST NAME OF APPLICANT, APPELLANT, OR CLAIMANT):

WATTS, Jason Lamar

Case No:

05-07943

INDUSTRIAL SECURITY HEARING CASE: \_\_\_\_\_ INDUSTRIAL SECURITY NON HEARING CASE:  
\_\_\_\_\_

PERSONAL APPEARANCE CASE: (CHECK APPROPRIATE CATEGORY) (DoD) (USA) (USN) (USAF) (USMC)

LOCATION OF HEARING OR PERSONAL APPEARANCE (CITY AND STATE):

FORM



DATE CASE ASSIGNED (NOT DATE RECEIVED):

\_\_\_\_\_  
May 1, 2005

DATE LAST TRANSCRIPT RECEIVED:

\_\_\_\_\_  
FORM

DUE DATE:

\_\_\_\_\_  
June 15, 2006

DATE ACTUALLY COMPLETED:

\_\_\_\_\_  
May 31, 2006

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SUPPLEMENTAL INFORMATION ABOUT THE CASE (CHECK APPROPRIATE CATEGORY, OR MAKE APPROPRIATE ENTRY):

INDUSTRIAL SECURITY CASE:  PERSONAL APPEARANCE CASE:

SOR INCLUDES ONE OR MORE OF CRITERIA A-C, OR K (Change 3 cases)

SOR INCLUDES CRITERION I (CHANGE 3 CASES)

TESTIMONY FROM WITNESSES

NUMBER OF GOVERNMENT WITNESSES 0

NUMBER OF APPLICANT/CLAIMANT WITNESSES 0

PRINCIPAL AUTHOR OF APPEAL BOARD DETERMINATION

NON-PRINCIPAL AUTHOR OF APPEAL BOARD DETERMINATION

REMAND DETERMINATION

PRINCIPAL AUTHOR OF APPEAL BOARD DETERMINATION

CHAMPUS CASE  ADP CASE  DoD DEPENDENT SCHOOL CASE

Peer Review Checklist for Administrative Judge's Decisions

CASE NO: 05-07943 AUTHOR:

Claude Heiny

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DATE: May 31, 2006 PEER REVIEWER:

ITEMS FOR REVIEW DURING PEER REVIEW PROCESS:	Author	Peer Reviewer
<p>1. Is the case caption correct and complete?</p> <p>Name of applicant/appellant (Identical to the SOR)?</p> <p>SSN?</p> <p>Case number and prefix (ISCR, ADP, or proper CAF)?</p> <p>AJ's name and identities of the parties?</p>		
<p>2. Is the format (font style and size, line spacing, section names, margins, macros, etc.) correct?</p>		
<p>3. Does the SYNOPSIS serve its function as a <u>brief</u> one paragraph head note highlighting only significant facts providing the reader a quick idea of what the case stands for?</p>		
<p>4. Does the last sentence of the SYNOPSIS clearly state the final action (in an ISCR/ADP case does it say "Clearance is granted" or "Clearance is denied," and in a PA is a meaningful recommended decision clearly indicated and made to the proper PSAB - with or without a conditional basis or warning)?</p>		
<p>5. Are the regulatory authorities (directive, executive orders, various regulations, 10 U.S.C. § 986, DCID 6/4) correctly and completely identified, to include the latest changes, modifications, and revisions?</p>		
<p>6. Is the chronology in the STATEMENT OF THE CASE or CASE HISTORY correct?</p> <p>SOR date?</p> <p>Answer date?</p> <p>If a PA, are the LOI/LON/LOD actions adequately described?</p> <p>If a PA, are the mitigated issues adequately described?</p> <p>Are the appropriate Adjudicative Guidelines indicated?</p> <p>Are the applicant's/appellant's admission identified?</p>		
<p>7. Are the FINDINGS OF FACT logically organized by chronology, subject, or another logical method?</p>		
<p>8. Are the FINDINGS OF FACT statements of fact as opposed to a mere summary of SOR allegations or events or summary of witness testimony?</p>		
<p>9. Does the policy section of an ISCR/ADP decision contain references to, and text from, the appropriate pertinent Adjudicative Guidelines and or other policy matters such as the Money Memo or 10 U.S.C. § 986 (Smith Amendment)?</p>		
<p>10. In the CONCLUSIONS section, are the relevant disqualifying and mitigating conditions identified, quoted, and discussed, with relation to the facts, as opposed to a mere repetition of the facts, without a meaningful synergism?</p>		
<p>11. In the CONCLUSIONS section, is there reasoned decision-making leading to a rational connection between the findings and conclusions?</p>		
<p>12. Do the FORMAL FINDINGS address each of the SOR allegations and are they consistent with the SYNOPSIS, e.g. - "is not" versus "is"?</p>		

13. If a Smith Amendment case, does the decision comply with DOHA Operating Instruction No. 64 as to a recommendation for a waiver?	NA	NA
14. Is the decision or recommended decision, as appropriate, signed by the AJ?	Draft	Draft
15. Except in allegiance, foreign influence, and foreign preference cases, have all references to locations been avoided, and in all cases, have the privacy concerns - identities of individuals, organizations, employers, creditors, court systems, police departments, etc. - been addressed and references made generic?		
16. Have the punctuation, spelling, and grammar been checked for accuracy?		
17. Have potential "land mines" - slams of a particular perceived practice or procedure; "pokes-in-the-eye" - messages regarding a perceived injustice or controversial practice; and gratuitous, inflammatory dicta, been eliminated?		

1. This action was taken under Executive Order 10865, dated February 20, 1960 as amended.
2. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
3. DoD 5200.2-R, ¶ C6.1.1.1.
4. *Id.* at Appendix 8.
5. DoD 5200.2-R, ¶ C8.2.1.
6. Directive ¶ E3.1.14.
7. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
8. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
9. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).
10. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.
11. *See* Exec. Or. 10865 § 7.