

KEYWORD: Personal Conduct; Drug Involvement; Criminal Conduct

DIGEST: Applicant used marijuana on various occasions from 1996 to early 2002. After being granted a security clearance in May 2000, he used marijuana approximately two to four times until early 2002. Concerns about his illegal drug use have been mitigated by the absence of illegal drug use in over four years and his assurances that he does not intend to use illegal drugs in the future. However, his deliberate omission of his illegal drug use on an April 2004 security clearance application raises security concerns about his honesty, judgment and reliability. Security concerns based on personal conduct and criminal conduct are not mitigated. Clearance is denied.

CASE NO: 05-10495.h1

DATE: 06/22/2006

DATE: June 22, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-10495

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant used marijuana on various occasions from 1996 to early 2002. After being granted a security clearance in May 2000, he used marijuana approximately two to four times until early 2002. Concerns about his illegal drug use have been mitigated by the absence of illegal drug use in over four years and his assurances that he does not intend to use illegal drugs in the future. However, his deliberate omission of his illegal drug use on an April 2004 security clearance application raises security concerns about his honesty, judgment and reliability. Security concerns based on personal conduct and criminal conduct are not mitigated. Clearance is denied.

STATEMENT OF THE CASE

On November 25, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline H, Drug Involvement; Guideline E, Personal Conduct; and Guideline J, Criminal Conduct.

In a sworn statement signed December 18, 2005, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on March 7, 2006. DOHA issued a notice of hearing on March 29, 2006, scheduling the hearing for May 1, 2006. The hearing was conducted as scheduled. The government submitted three exhibits that were marked as Government Exhibits (Gov Ex) 1-3. The exhibits were admitted into the record without objection. Applicant testified on his own behalf and submitted 11 exhibits which were marked as Applicant Exhibits (AE) A-K and admitted without objection. DOHA received the hearing transcript (Tr.) on May 9, 2006.

FINDINGS OF FACT

In his SOR response, Applicant admits to the all of the allegations in the SOR. Applicant's admissions to the allegations

in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 29-year-old systems engineer for a defense contractor who is applying for a TOP SECRET security clearance.⁽²⁾ He has a bachelor's degree in electrical engineering.⁽³⁾ He is single and has no dependents.⁽⁴⁾

Applicant first tried marijuana in college at age 19. He used marijuana while in school approximately once a month. He used marijuana approximately once a week during summer vacations. He would smoke marijuana with friends.⁽⁵⁾ He purchased marijuana a couple of times while in college for his own personal use.⁽⁶⁾

After graduating from college, Applicant was hired by a defense contractor. In conjunction with his employment, he applied for a security clearance. On February 2, 2000, he submitted a security clearance application.⁽⁷⁾ He answered "No" to Question 27 on the application which reads:

Your Use of Illegal Drugs and Drug Activity - Illegal Use of Drugs. Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbituates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?

He did not list his marijuana use on his February 2000 security clearance application because he was not sure who was going to see the answers. He was also concerned about getting a security clearance and getting a job.⁽⁸⁾ He was granted a SECRET security clearance in May 2000.⁽⁹⁾

From 2000 to early 2002, Applicant used marijuana approximately two to four times.⁽¹⁰⁾ He admits that he used marijuana after being granted a security clearance.⁽¹¹⁾ He has not used marijuana since early 2002 and has no intention to use marijuana in the future.⁽¹²⁾ He no longer socializes with people who use marijuana.⁽¹³⁾

In November 2003, Applicant accepted a job with another Department of Defense contractor. On April 6, 2004, he submitted a security clearance application for a TOP SECRET clearance.⁽¹⁴⁾ He answered "No" to question 27 which has the same wording as question 27 on his previous security clearance application. He also answered "No" to question 28 which reads:

Your Use of Illegal Drugs and Drug Activity - Use in Sensitive Positions. Have you EVER illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a position directly and immediately affecting public safety? [\(15\)](#)

He did not list his marijuana use over the past seven years as well as his use of marijuana after being granted a security clearance. He did not list his illegal drug use on his April 6, 2004, security clearance application because he did not think he could change his answers since he did not list his marijuana use on his previous security clearance application. [\(16\)](#) He was also concerned about losing his job and his security clearance. [\(17\)](#)

On August 30, 2004, Applicant provided a signed, sworn statement to a Special Agent of the Defense Security Service. [\(18\)](#) He acknowledged his past drug use and admitted that he intentionally answered "No" in response to questions 27 and 28 on his security clearance application in order to hide his past drug use. [\(19\)](#)

Applicant submitted seven letters of support from co-workers, friends and his father. [\(20\)](#) He also submitted copies of two awards, a merit promotion, and his training history. [\(21\)](#) His character letters indicate that he is a loyal and professional employee who follows security policies. His friends describe him as a trustworthy friend. [\(22\)](#) His father states that he was never a disciplinary problem and is trustworthy and reliable. He believes his son understands and will live up to his responsibility to safeguard classified information. [\(23\)](#)

POLICIES

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." [\(24\)](#) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

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. [\(25\)](#)

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. [\(26\)](#)

Guideline J - Criminal Conduct: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. [\(27\)](#)

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." [\(28\)](#) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. [\(29\)](#) An administrative judge should consider the following factors: (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. [\(30\)](#)

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. [\(31\)](#) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts admitted by the applicant or proven by Department Counsel. The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision. [\(32\)](#) Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. [\(33\)](#)

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 a determination as to the loyalty of the applicant. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guidelines E, Personal Conduct; H, Drug Involvement; and J, Criminal Conduct.

Guideline E - Personal Conduct

Even though he has admitted to SOR subparagraph 1.a, I find for the Applicant with respect to this allegation. SOR subparagraph 1.a states:

You falsified material facts on a security clearance application (SF 86) you caused to be electronically submitted on or about February 2, 2000, on which you were required to reply to the following question: **"29. Your Use of Illegal Drugs and Drug Activity - Drug Activity.** In the last 7 years, have you been involved in the illegal purchase, manufacture, trafficking, production, transfer, shipping, receiving, or sale of any narcotic, depressant, stimulant, hallucinogen, or cannabis for your own intended profit or that of another?" to which you answered "No"; whereas in truth, you deliberately failed to list that you used marijuana as set forth below:

(1) You used marijuana with varying frequency, from approximately 1996 to at least February 2000.

Applicant admits to purchasing marijuana a few times while in college for his own personal use. He did not purchase marijuana for his own or any other person's intended profit. Question 29 asks if a person has been involved with illegal drugs for the purpose of making a profit rather than purchasing illegal drugs for their own personal use. There is nothing in the record evidence which indicates his purchase of marijuana was for profit. As such, I find for Applicant with respect to SOR subparagraph 1.a.

Applicant admits to deliberately not disclosing his illegal drug use on his February 2000 security clearance application in response to question 27. The government did not allege this in the initial SOR and made no attempt to amend the SOR at hearing. His deliberate omission of his illegal drug use on his February 2000 security clearance application is considered for credibility purposes only since it was not alleged in the SOR.

Applicant's deliberate falsification of his security clearance application submitted on April 6, 2004, supports the

application of Personal Conduct Disqualifying Condition (PC DC) 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, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*). Applicant admits that he deliberately did not disclose his illegal drug use on his April 2004 security clearance application because he felt he had to be consistent with his first security clearance application. He was also concerned about losing his job and his security clearance.

Considering the Personal Conduct Mitigating Conditions (PC MC), only PC MC E2.A5.1.3.3: (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*) has the potential to apply to the facts of this case. I find that it does not apply. Applicant deliberately falsified his April 6, 2004, security clearance application by failing to disclose his illegal marijuana use in response to question 27 and by failing to disclose his illegal marijuana use while holding a security clearance in response to question 28. He did not provide an accurate assessment of his illegal drug use until August 2004. I cannot conclude his disclosure of his illegal drug use was prompt. As such PC MC E2.A5.1.3.3 does not apply. I conclude the personal conduct security concern is not mitigated.

Guideline H - Drug Involvement

Between 1996 to early 2002, Applicant illegally used marijuana on various occasions. He used marijuana in social situations, mostly while a college student. He used extremely poor judgment when he decided to use marijuana on a few occasions after being granted a security clearance. Under the Drug Involvement Guideline, Disqualifying Condition (DI DC) E2.A8.1.2.1: (*Any drug abuse*) applies as well as DI DC E2.A8.1.2.2: (*Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*).

Security concerns based on possession and use of illegal drugs can be mitigated. I find that Drug Involvement Mitigating Condition (DI MC) E2.A8.1.3.1: (*The drug involvement was not recent*) and DI MC E2.A8.1.3.3 (*A demonstrated intent not to abuse any drugs in the future*) applies. Applicant has not used illegal drugs since early 2002. He no longer associates with people who use illegal drugs. His priorities have changed. The security concerns raised by Applicant's use of illegal drugs are mitigated.

Guideline J - Criminal Conduct

Applicant's deliberate falsifications on his April 6, 2004, security clearance application violates Title 18, United States Code Section 1001, a felony. As such, Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1: (*Allegations or admission of criminal conduct, regardless of whether the person was formally charged*) and CC DC E2.A10.1.2.2 (*A single serious crime or multiple lesser offenses*) apply.

None of the mitigating conditions apply. Applicant's deliberate falsification occurred during a current background investigation, as such his criminal conduct is recent. He withheld information about his illegal drug use on two security clearance applications so his criminal conduct cannot be described as an isolated incident. Applicant maintained his deliberate deception pertaining to his illegal drug use over a four-year period. Considering he did not fully disclose the extent of his drug use until August 2004, I find that not enough time has passed to establish clear evidence of successful rehabilitation. The security concern raised by Applicant's criminal conduct is not mitigated.

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 E: AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Paragraph 2. Guideline H: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph 3.a 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.

ERIN C. HOGAN

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended.
2. Tr. at 4, 22; Gov Ex 2.
3. Tr. at 4.
4. Tr. at 22.
5. Tr. at 19.
6. Tr. at 20.
7. Gov Ex 1.
8. Tr. at 16, 24.
9. Gov Ex 2, question # 31.
10. Tr. at 20-21, 24.
11. Tr. at 21.
12. Tr. at 26.
13. Tr. at 24.
14. Gov Ex 2.
15. *Id.*
16. Tr. at 17.
17. Tr. at 24-25; Answer to SOR.

18. Gov Ex. 3.
19. Gov Ex. 3.
20. AE A - H.
21. AE I - K.
22. AE G.
23. AE H.
24. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
25. Directive, ¶ E2.A5.1.1.
26. Directive, ¶ E2.A8.1.1.
27. Directive, ¶ E2.A10.1.1.
28. Directive, ¶ E2.2.1.
29. *Id.*
30. *Id.*
31. Directive, ¶ E3.1.14.
32. Directive, ¶ E3.1.15.
33. Directive, ¶ E.2.2.2.