

KEYWORD: Drugs; Personal Conduct; Criminal Conduct

DIGEST: Applicant is 24 years old and works for a federal contractor. When she completed her 2003 and 2004 security clearance applications, she did not disclose her history of marijuana use. She failed to mitigate the security concerns raised by her substance abuse, personal conduct and criminal conduct. Clearance is denied.

CASENO: 05-10577.h1

DATE: 05/24/2006

DATE: May 24, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-10577

**DECISION OF ADMINISTRATIVE JUDGE**

**SHARI DAM**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is 24 years old and works for a federal contractor. When she completed her 2003 and 2004 security clearance applications, she did not disclose her history of marijuana use. She failed to mitigate the security concerns raised by her substance abuse, personal conduct and criminal conduct. Clearance is denied.

### **STATEMENT OF THE CASE**

On December 12, 2005, the Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) to Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended. The SOR detailed reasons under Guidelines H (Drug Involvement), E (Personal Conduct), and J (Criminal Conduct) why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to the Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

On January 3, 2006, Applicant filed an Answer, admitting the allegations contained in the SOR, and elected to have the case decided on the written record in lieu of a hearing. On January 31, 2006, Department Counsel prepared a File of Relevant Material (FORM), along with Government Exhibits (GX) 1-6, and mailed Applicant a complete copy on February 6, 2006. Applicant had 30 days from the receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on April 1, 2006, and did not submit any additional information. This case was assigned to me on May 16, 2006.

## FINDINGS OF FACT

Based on the entire record, including Applicant's admissions in her Answer to the SOR, I make the following additional findings of fact:

Applicant is 24 years old and employed as a computer network engineer for a federal contractor. She submitted a security clearance application (SCA) in June 2003, and one in March 2004.

Applicant admitted that she used marijuana, with varying frequency, from 1995 to at least March 2005 (¶1.a). She also admitted that she used it after she was granted a secret clearance in December 2003, and subsequent to receiving an interim top secret clearance in April 2004 (¶ 1.b).<sup>(1)</sup>

When Applicant signed her June 2003 SCA, she swore her answers were "true, complete and correct." In response to Question 27. 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 (barbiturates, methaqualone, tranquilizers, etc.) hallucinogenic (LSD, PCP, et.), or prescription drugs?*), to which she answered "No." She failed to disclose her use of marijuana from 1996 to June 2003. (SOR ¶ 2.a) In her March 2004 SCA, she again answered "No" to the question, failing to disclose her marijuana use from 1997 to March 2004. (SOR ¶ 2.b)

In response to Question 28. 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 the public safety?*) on her March 2004 SCA, she answered "No." She failed to disclose her marijuana use from 1997 to 2004. (SOR ¶ 2.c)

In her Answer to the SOR, Applicant admitted that she falsely answered the above questions. She said she "was ashamed and afraid that my misjudgment would affect my position as an intern."<sup>(2)</sup> She never considered herself a "frequent user" of marijuana, but used it as a result of peer pressure in high school and college.<sup>(3)</sup> She also was confused by the question and did not realize that after she left her intern position, she still held a security clearance when she returned to college. She acknowledged that she made a mistake and plans "to avoid future use."<sup>(4)</sup> She never owned or sold any illegal substances, and never worked as an intern while under the influence of drugs.<sup>(5)</sup>

## POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, sets forth the criteria that must be evaluated when determining security clearance eligibility. Within those guidelines are factors to consider in denying or revoking an individual's request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual's request for access to classified information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence to reach a fair, impartial and common sense decision.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Section E.2. of Enclosure of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct of the applicant, an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not just the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. Directive, Enclosure 2, ¶ E2.2.2. The decision to deny an individual a security clearance request to an individual is not necessarily a judgment of the applicant's loyalty. Executive Order 10865, § 7. Instead, it is a determination that the applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify or may disqualify, the applicant from being eligible for access to classified information. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). The Directive presumes a rational connection between past proven conduct under any disqualifying condition and an applicant's present security suitability. ISCR Case No. 95-0611 at 3 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the position of the government. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his clearance." *Id.*

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

**Guideline H - Drug Involvement:** A security concern arises when an individual is improperly or illegally involved with drugs, as it 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 unauthorized disclosure of classified information.

**Guideline E - Personal Conduct:** A security concern arises when 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 J - Criminal Conduct:** A security concern may arise when an individual's history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

The qualifying and mitigating conditions, raising either security concerns or mitigating security concerns applicable to this case, are set forth and discussed in the Conclusions section below.

## **CONCLUSIONS**

I have considered all of the facts in evidence and the application of the appropriate legal standards, including the "whole person" concept, and conclude the following with respect to the allegations set forth in the SOR:

## Guideline H: Drug Involvement

Based on Applicant's admissions of using marijuana, the Government established its case under Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1 (*Any drug abuse*), which is defined under E2.A8.1.1.3 as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction." Marijuana is included in that definition.

I considered all four of the Drug Involvement Mitigating Conditions (DI MC) and conclude that Applicant did not present evidence to support the application of any condition. (1) Applicant has a history of abusing marijuana from 1995 to 2005, such that DI MC E2.A8.1.3.1 (*The drug involvement was not recent*) does not apply. (2) Based on her Answer that she used marijuana over a period of ten years, DI MC E2.A8.1.3.2 (*The drug involvement was an isolated or aberrational event*) is not applicable. (3) Other than stating that she plans to avoid using drugs in the future, Applicant did not submit any evidence substantiating her statement that she has stopped using marijuana, which is necessary to mitigate the disqualification under DI MC E2.A8.1.3.3 (*A demonstrated intent not to abuse any drugs in the future*). (4) She did not provide any evidence that she has either been evaluated for substance abuse or completed a treatment program, as required under DI MC E2.A8.1.3.4 (*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.*) Hence, the allegations contained in SOR ¶¶ 1.a and 1.b are not mitigated and are concluded against her. Accordingly, Guideline H is decided against her.

## Guideline E: Personal Conduct

Based on the evidence, the Government established its case under Guideline E, specifically, 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 admitted that she falsified her applications when she failed to disclose her illegal use of marijuana.

I reviewed all of the mitigating conditions under this guideline, in particular two of them, and conclude neither applies. (1) The three falsifications were made in 2003 and 2004, and it appears that Applicant did not volunteer the correct information, as required under Personal Conduct Disqualifying Condition (PC C) E2.A5.1.3.2 (*The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*). (2) Nor is there any evidence that Applicant made any effort to correct the answers before she was confronted by an investigator, sufficient to mitigate the matter under PC MC E2.A5.1.3.3 (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*). Hence, the allegations contained in SOR ¶¶ 2.a through 2.c are not mitigated and are concluded against her. Accordingly, Guideline E is decided against Applicant.

## Guideline J - Criminal Conduct

Applicant's admission that she falsely answered Questions 27 and 28 on her SCA constitutes a felony under Section 1001 of Title 18, United States Code, which makes it a criminal offense, punishable by a fine, imprisonment, or both to knowingly and willfully make a false statement on a writing, in this case, the SCA. Based on that admission, I conclude she deliberately falsified her security clearance applications; thus, the Government established its case under Criminal Conduct Disqualifying Condition E2.A10.1.2.1 (*Allegations or admission of criminal conduct, regardless of whether the person was formally charged*). None of the mitigating conditions apply, for reasons similar to those set forth under Guidelines H and E above. Hence, the allegation contained in SOR ¶ 3.a is concluded against her. Accordingly, Guideline J is decided against Applicant.

I also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests, including Applicant's young age, her forthright acceptance of responsibility for her behavior, the reasons underlying the falsifications, and her lack of understanding that she had an obligation to comport her behavior to the law while holding a security clearance, regardless of her job status. I am persuaded by the totality of the evidence that Applicant has not had sufficient time to establish a track record of responsible and mature behavior, free from peer pressure and drug use, to warrant a security clearance.

For the reasons stated, I conclude Applicant is not 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 as follows:

Paragraph 1: Guideline H (Drug Involvement) AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Paragraph 2: Guideline E (Personal Conduct) AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Paragraph 3: Guideline J (Criminal Conduct) AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

**DECISION**

In light of all of 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.



Shari Dam

Administrative Judge

1. GX 3.
2. GX 3 at 5.
3. *Id.*
4. *Id.*
5. *Id.* at 6.