

KEYWORD: Drugs; Personal Conduct; Criminal Conduct

DIGEST: Applicant is a 57-year-old engineer who has worked for a federal contractor since 1986 and has held a secret security clearance since 1990. From 1969 to 2001 he used various illegal drugs, with varying frequency and also purchased illegal drugs. He intentionally failed to divulge on his security clearance application his complete drug history and that he abused drugs while holding a security clearance. Applicant failed to mitigate security concerns under Guidelines H, drug involvement, Guideline E, personal conduct, and Guideline J, criminal conduct. Clearance is denied.

CASE NO: 05-11126

DATE: 06/16/2006

DATE: June 16, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-11126

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 57-year-old engineer who has worked for a federal contractor since 1986 and has held a secret security clearance since 1990. From 1969 to 2001 he used various illegal drugs, with varying frequency and also purchased illegal drugs. He intentionally failed to divulge on his security clearance application his complete drug history and that he abused drugs while holding a security clearance. Applicant failed to mitigate security concerns under Guidelines H, drug involvement, Guideline E, personal conduct, and Guideline J, criminal conduct. Clearance is denied.

STATEMENT OF CASE

On February 15, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating it was 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, alleges security concerns under Guideline H, drug involvement, Guideline E, personal conduct, and Guideline J, criminal conduct.

In a sworn statement dated March 13, 2006, Applicant responded to the SOR allegations. Applicant admitted all of the SOR allegations, except ¶ 1.1. Applicant elected to have his case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on March 27, 2006. The FORM was mailed to Applicant on March 28, 2006, and received on April 3, 2006. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant's response was timely and Department Counsel had no objections. The case was assigned to me on June 9, 2006.

FINDINGS OF FACT

Applicant is a 57-year-old engineer who has worked for a federal contractor since 1986. He has held a secret security clearance since 1990. He is twice married and divorced and has four children. His most recent divorce was final in May 2004.

Applicant abused marijuana, with varying frequency, to include weekly, from about 1969 to at least 2001. He used cocaine, with varying frequency, to include weekly, from about 1977 to at least 1996. He used amphetamines from about 1977 to at least 1982 and in August 1994. Applicant also purchased marijuana on several occasions, and cocaine on numerous occasions. He abused and purchased the drugs after being granted a secret security clearance in 1990.

On August 13, 1994, he was arrested and charged with possession of a narcotic drug, a class B felony. He pled guilty and received a 12 month jail sentence that was suspended, and he was placed on three years supervised probation, fined \$1,000, ordered to attend Alcoholics/Narcotic Anonymous three times a week, enroll and participate in mental health counseling on a regular basis, refrain from using alcohol, and be subjected to random substance abuse testing.

In August 1994, Applicant was diagnosed by a medical doctor as "chemically dependent personality using cocaine and amphetamines."⁽²⁾ He was also diagnosed for cocaine dependence, amphetamine dependence, marijuana abuse, and as having a post substance induced psychosis. He received inpatient treatment for these conditions from August 13, 1994 to August 17, 1994. He received intensive outpatient treatment at a chemical dependency program from August 18, 1994 to September 1994, October 16, 1995 to January 29, 1996, and July 31, 1996 to about August 26, 1996.

On July 15, 1996, Applicant was charged with violation of probation after he tested positive for cocaine on December 6, 1995. He admitted he smoked marijuana on July 11, 1996, and had failed to refrain from consuming alcohol, violations of the conditions of his probation. He pled guilty and was sentenced to 12 months in jail with all but four weekends suspended and continued probation for one year. Applicant continued to use marijuana to at least 2001, notwithstanding his drug treatment.

On May 9, 2002, Applicant completed a security clearance application (SCA). In response to Question 27⁽³⁾ he responded that he had used marijuana 50 times from March 1995 to December 2000. He failed to list he had used marijuana to 2001, and had used cocaine until at least 1996. He claimed he thought listing his narcotics arrest was enough to interpret that he had used cocaine.⁽⁴⁾ In response to Question 28⁽⁵⁾ Applicant answered "No" and failed to list his use of marijuana, cocaine, and amphetamines, while possessing a secret security clearance. Applicant deliberately failed to provide truthful answers in his sworn responses, a violation of Title 18 U.S.C. § 1001, felony violations.

Applicant blames his past "indiscretions" as being brought about by his marriage to his wife and accused her of being "sociopathic." He stated in his sworn statement on December 12, 2002, that "I started and continued to smoke marijuana

because of family problems that I was experiencing and it was a bad habit." ⁽⁶⁾ Regarding his cocaine use he further stated "On one occasion when I binged and purchased/snorted cocaine I purchased and snorted approximately three or four grams over a two to three day period." ⁽⁷⁾ He was taken to a hospital because he thought he was having a heart attack and remained there for two to four days. He went through drug rehabilitation treatment, but relapsed into using cocaine. He claims he eventually stopped using cocaine, but continued to use marijuana after his probation expired. ⁽⁸⁾

Applicant confirmed, "I realize that I used marijuana and cocaine while holding a sensitive position and a security clearance at ... Company. I did not feel that it adversely impacted my performance. I did understand that I was not to use drugs while holding a security clearance, but my personal life was out of control at the time. I do not intend to use drugs in the future because I have matured and understand that using drugs and possessing a security clearance is not compatible." ⁽⁹⁾ Applicant was 52 years old when he made this statement. In response to questions about his drinking habits, Applicant stated on December 12, 2002: "I have stopped drinking and have not consumed alcohol for about a month. I do not intend to drink in the future." ⁽¹⁰⁾ Three years later on December 12, 2005, in responding to a question about whether he drinks alcohol, he stated "yes" and that he drinks about twice a week. ⁽¹¹⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. ⁽¹²⁾ The government has the burden of proving controverted facts. ⁽¹³⁾ The burden of proof is something less than a preponderance of evidence. ⁽¹⁴⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him. ⁽¹⁵⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. ⁽¹⁶⁾

No one has a right to a security clearance⁽¹⁷⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁸⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹⁹⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽²⁰⁾ 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.

Based upon consideration of all the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline H-Drug Involvement is a security concern because 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.

Guideline E-Personal Conduct is a security concern when an individual's conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that could indicate that the person may not properly safeguard classified information.

Guideline J-Criminal Conduct is a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness.

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

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 H, E and J.

Based on all the evidence, Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1 (*Any drug abuse* (21)), DI DC E2.A8.1.2.2 (*Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*), DI DC E2.A8.1.2.3 (*Diagnosis by a credentialed medical professional (e.g. physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence*), and DI DC E2.A8.1.2.5 (*Failure to successfully complete a drug treatment program prescribed by a credentialed medical professional*) apply. Applicant used marijuana, cocaine and amphetamines, in varying frequency and at various times, depending on the drug used, from 1969 to 2001. He was diagnosed by a medical doctor with chemical dependency for cocaine and marijuana. He went through inpatient and outpatient chemical dependency treatment programs and continued to use drugs after his treatment.

I considered all the mitigating conditions and especially considered Drug Involvement Mitigating Condition (DI MC) E2.A8.1.3.1 (*The drug involvement was not recent*); DI MC E2.A8.1.3.2 (*The drug involvement was an isolated or aberrational event*), DI MC E2.A8.1.3.3 (*A demonstrated intent not to abuse any drugs in the future*) and 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*). Applicant's past drug use was rampant and therefore not isolated or aberrational. DC MC E2.A8.1.2 does not apply. Applicant claimed he did not intend to use drugs in the future. Applicant also claimed in 2002 that he did not intend to use alcohol in the future, and admitted in 2005 that he consistently drinks alcohol. This causes me to question his credibility. He has been through several drug treatment programs, both inpatient and outpatient and relapsed by continuing to use drugs. He has not completed a drug treatment program without recurrence of abuse. I have not had an opportunity to examine Applicant's credibility in person and delve into his recent actions and proclaimed abstinence. I am especially concerned that he blames his lengthy drug history on his now ex-wife, rather than his own voluntary actions. I find none of the mitigating conditions apply. Applicant failed to mitigate the security concerns regarding his drug involvement.

Based on all the evidence, Personal Conduct Disqualifying Condition (PC DC) E2A5.1.2.2 (*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*) and PC DC E2.A5.1.2.5 (*A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency*) apply in this case. Applicant intentionally and deliberately lied on his SCA about the extent of his drug use and by denying he used drugs (on many occasions) while holding a security clearance.

I have considered all the mitigating conditions and especially considered Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.2 (*The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*), PC MC E2.A5.1.3.3 (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*), PC MC E2.A5.1.3.4 (*Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided*), and PC MC E2.A5.1.3.5 (*The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*). I conclude none of the mitigating conditions apply. His falsifications were not isolated and he did not come forward voluntarily to provide correct information until confronted with the facts by an investigator. For a period of at least eleven years, while holding a security clearance he violated the rules and trust associated with a security clearance. He was aware of his violations and

continued to repeat them. He does not take responsibility for his actions, but blames his ex-wife. He not only shows a lack of appreciation for the gravity of holding a clearance and his security violations, but also a lack of appreciation for his repeated criminal conduct, using and purchasing illegal drugs. Applicant has failed to mitigate the security concerns regarding his personal conduct.

Based on all the evidence, Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1 (*Allegations or admissions 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*) both apply.

Applicant intentionally and deliberately lied on his SCA, in violation of Title 18 U.S.C. §1001, felonies.

I have considered all the mitigating conditions and especially considered Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.3.1 (*The criminal behavior was not recent*), CC MC E2.A10.1.3.2 (*The crime was an isolated incident*), CC MC E2.A10.1.3.3. (*The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life*), CC MC E2.A10.1.3.4 (*The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur*), and CC MC E2.A10.1.3.6 (*There is clear evidence of successful rehabilitation*), and conclude none apply. One objective of the security clearance process is to determine all relevant and material information concerning an applicant. The process requires full and open disclosure by the applicant of all requested information. Any intentional misrepresentation or omission by an applicant materially obstructs the investigation of Applicant's security worthiness and raises serious concerns about the character and overall integrity of the individual. I find Applicant deliberately failed to provide honest and accurate information required by the SCA, a felony violation under Title 18 U.S.C. § 1001. His lack of candor raises serious security concerns about his honesty, trustworthiness and judgment. Applicant's offenses were not isolated because he intentionally lied twice on his SCA. There is no evidence he was pressured or or his acts were anything but voluntary. There is also no substantive evidence that he is successfully rehabilitated.⁽²²⁾ Many of the same facts and analysis discussed under the personal conduct guideline apply equally under the criminal conduct guideline. In light of all of the evidence presented, I find Applicant failed to mitigate criminal conduct concerns.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of his acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I find Applicant has failed to mitigate the security concerns raised by the drug involvement, personal conduct concerns, and criminal conduct concerns. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline H, E and J are decided against Applicant.

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: Drug Involvement (Guideline H) AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m: Against Applicant

Subparagraph 1.n: Against Applicant

Paragraph 2: Personal Conduct (Guideline E) AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Paragraph 3: Criminal Conduct (Guideline J) AGAINST APPLICANT

Subparagraph 3.a: Against 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 is denied.

Carol. G. Ricciardello

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 and modified (Directive).

2. Items 7 and 8.

3. SF 86, Question 27 asks "*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, etc.), or prescription drugs?*"

4. Item 5 at 3.

5. SF 86, Question 28 asks "*Your use of Illegal Drugs and Drug Activity-Use in Sensitive Positions--Have you EVER illegal 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?*"

6. Item 5 at 2.

7. *Id.* at 2-3.

8. *Id.* at 4.

9. *Id.* at 6.

10. Item 5 at 5.

11. Item 6 at 2.

12. ISCR Case No. 96-0277 at 2 (App. Bd. Jul. 11, 1997).

13. ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

14. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

15. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

16. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

17. *Egan*, 484 U.S. at 531.

18. *Id.*

19. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

20. Executive Order 10865 § 7.

21. E2.A8.1.1.2.1 defines drug abuse as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

22. Applicant's criminal violations for drug use and purchasing drugs and his arrest for narcotics possession were not alleged in the SOR under Guideline J and will not be considered for disqualifying purposes; however, they may be considered when analyzing the whole person and as a factor to decide if there is successful rehabilitation.