

DATE: January 31, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-01511

DECISION OF ADMINISTRATIVE JUDGE

JUAN J. RIVERA

APPEARANCES

FOR GOVERNMENT

Daniel Crowley, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

From 1998 to April 2005, Applicant used marijuana with varying frequency. In 2000, he also used cocaine, opium, and ecstasy at least once. In 2004, Applicant submitted an application for a security clearance in which he deliberately failed to disclose the above information. He failed to mitigate the drug involvement and personal conduct security concerns. Clearance is denied.

STATEMENT OF THE CASE

On June 16, 2006, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns under Guideline H (Drug Involvement), and Guideline E (Personal Conduct). The SOR informed Applicant that, based on information available to the government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant him access to classified information. [\(1\)](#)

On July 7, 2006, Applicant answered the SOR (Answer), admitted all the SOR allegations, and requested a hearing. The case was assigned to me on November 22, 2006. On December 21, 2006, I convened a hearing at which the government presented one exhibit, marked GE 1, to support the SOR. Applicant testified and presented no exhibits. DOHA received the transcript (Tr.) on January 3, 2007.

FINDINGS OF FACT

Applicant's admissions to the SOR are incorporated herein as findings of fact. After a thorough review of the pleadings, transcript, and the exhibit, I make the following additional findings of fact:

Applicant is 25 years old, single, and lives with his parents. He was awarded a bachelor's degree in 2003, with concentrations in political science and history. He has been working for government contractors since September 2004.

Applicant began using marijuana at age 17 while in high school. Afterwards, he used marijuana on a regular basis during the weekends and once every three to four days until 2001. On or about ay 2001, he was convicted for driving under the influence of alcohol (DUI) and placed in a two-year probation/sentence diversion program.⁽²⁾ He did not use marijuana during his probation period because he was subject to routine substance abuse testing.⁽³⁾ His probation ended in September 2003, and Applicant began to use marijuana again in November 2003. He used marijuana three to four times between November 2003 and February 2004, and then resumed using marijuana on a regular basis, approximately once every two or three weeks.⁽⁴⁾ He described himself as a social user, consuming marijuana with friends during social occasions. He contributed money for the purchase of marijuana on one occasion. Applicant claimed he did not purchase marijuana, but mostly shared his friends' marijuana.

Applicant averred he last used marijuana in April 2005.⁽⁵⁾ He was concerned about being fired from his job if he was caught using illegal drugs and felt "warranted not to indulge in any substances."⁽⁶⁾ His initial interim security clearance had been revoked because of his DUI conviction.

Applicant also used cocaine, opium, and ecstasy, at least one time each during 2000. He used cocaine and opium socially with his friends. He was given the ecstasy as a birthday present and consumed the ecstasy along with 40 of his friends at his birthday party. Applicant claimed he has never used cocaine, opium, or ecstasy again because he never felt the need for them.

After graduating from college, Applicant worked for a retail sales furniture store for approximately one year. In September 2004, he was hired by a Department of Defense (DOD) contractor, as an antenna handler/laborer, and submitted an Office of Personnel Management Security Clearance Application (SF 86), dated November 2004.⁽⁷⁾ He was initially issued an interim security clearance. His interim clearance was revoked, however, due to concerns raised by his 2001 DUI conviction.⁽⁸⁾ In June 2005, Applicant transferred to work for his current employer, another DOD contractor.

Applicant deliberately falsified his answer to question 27 in his November 2004 SF 86. The question asked whether in the last seven years he had used any controlled substances. He answered "No" to question 27, and failed to disclose his use of marijuana, cocaine, opium, and ecstasy as previously discussed.

In August 2005, Applicant was interviewed by a government background investigator concerning discrepancies in his SF 86, his DUI conviction, and his alcohol rehabilitative treatment. The investigator asked him to sign a release for medical records so he could request Applicant's alcohol rehabilitation records. Applicant realized the government investigator would find out about his past use of drugs because he had disclosed that information during his alcohol rehabilitation treatment. When the investigator asked him whether he ever used illegal drugs, Applicant, for the first time, disclosed his use of illegal drugs.⁽⁹⁾

At his hearing, Applicant was asked why he falsified his SF 86. He testified he provided the false answers out of negligence, and that he had not intended to deceive the government.⁽¹⁰⁾ He explained: "I was writing no in anything other than the DUI offense because I figured that would be the only thing would come up."⁽¹¹⁾ Even though he falsified question 27, he claimed he knew the government would send an investigator to look into his DUI and the investigator would find out about his past drug use. Applicant was also asked why he continued using marijuana after submitting his SF 86 if he knew of the government concerns about his use of drugs and that the government would find out about his past use of drugs. Applicant testified it was just a mistake on his part. He did not expect his use of illegal drugs would be an issue for the government unless he was arrested or charged with use of illegal drugs.⁽¹²⁾

Applicant claimed he has not used drugs since April 2005, and that he has changed his lifestyle. He averred he is now older, mature, and realizes his job and his future are at stake. He claimed he has new friends and associates little with his old drug-using friends. When visiting with friends that "indulge" in drugs, Applicant claimed he just walks away from them.

POLICIES

The Directive sets forth adjudicative guidelines which must be considered in evaluating an Applicant's suitability for access to classified information. Foremost are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) under each adjudicative guideline applicable to the facts and circumstances of the case. Additionally, each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive,⁽¹³⁾ and the whole person concept.⁽¹⁴⁾ The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the granting or denial of access to classified information. Having considered the record evidence as a whole, I conclude Guideline H (Drug Involvement) and Guideline E (Personal Conduct) are the applicable relevant adjudicative guidelines.

BURDEN OF PROOF

The purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest⁽¹⁵⁾ to grant or continue an applicant's access to classified information. The government has the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. To meet its burden, the government must establish a prima facie case that it is not clearly consistent with the national interest for the applicant to have access to classified information. The responsibility then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, the applicant carries a heavy burden of persuasion.⁽¹⁶⁾ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest to ensure each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.⁽¹⁷⁾

CONCLUSIONS

Under Guideline H (Drug Involvement), the 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. Such conduct may also be criminal and indicative of a disregard for rules and regulations in place to protect national interests.⁽¹⁸⁾ Applicant's admissions to the SOR allegations and his testimony establish he used marijuana with varying frequency, from around 1998 until at least April 2005. He also used cocaine, opium, and ecstasy each on at least one occasion in 2000. Guideline H Disqualifying Condition (DC) 1: *Any drug abuse*,⁽¹⁹⁾ applies.

I considered all Guideline H Mitigating Conditions and I conclude none apply. Applicant has used drugs with varying frequency during the last seven years -- from age 17 in 1998 to at least age 24 in 2005. He used drugs through high school, college, and while employed by federal contractors and holding an interim security clearance. He knew or should have known about the criminal consequences of his behavior and the seriousness of his actions as a result of his 2001 conviction for DUI. Applicant abstained from the use of drugs while on probation for the DUI offense because he was subject to substance testing. However, as soon as his probation period was over, Applicant elected to continue with his use of illegal drugs.

Furthermore, Applicant knew the government would be concerned about his use of illegal drugs and intentionally falsified his November 2004 SF 86 to conceal his past use of drugs. As such, his falsification weighs against the presence of rehabilitation and positive behavioral changes. Notwithstanding Applicant's concern that the government would not grant him a security clearance if it found out about his past use of drugs, Applicant continued his use of marijuana until at least April 2005. Applicant claimed he has not abused drugs since April 2005. Notwithstanding, not enough time has passed to establish Applicant will not abuse drugs in the future. Considering the totality of the circumstances of his case, I find Applicant's drug involvement to be recent and not isolated. Additionally, Applicant presented no evidence of drug treatment or rehabilitation. Applicant's illegal involvement with drugs raises questions about his ability and willingness to follow the law, and ultimately, to protect classified information. I find Guideline H against the Applicant.

Under Guideline E (Personal Conduct), an applicant's [conduct is always a security concern because it asks the ultimate question - whether a person's past conduct instills confidence the person can be trusted to properly safeguard classified information](#). An applicant's conduct is a security concern if it involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Such behavior could indicate that the person may not properly safeguard classified information. [\(20\)](#)

The government established its case under Guideline E by showing that Applicant deliberately provided false answers when he submitted his SF 86. Applicant chose not to disclose his past drug abuse because of his concern for the adverse impact this information would have on his ability to obtain a security clearance. Applicant's explanations for his failure to disclose the information ring hollow in light of the totality of the facts and circumstances, including his age at the time he submitted the SF 86 and his demeanor and testimony. I find Applicant's omissions were knowing and deliberate, and committed with the intent to mislead the government. He believed that because he had no drug related criminal records, the government would not find out about his drug related behavior and, therefore, he deliberately omitted the information. Guideline E Disqualifying Conditions (DC) 2: *The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . .*, [\(21\)](#) and DC 4: *Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress . . .*, [\(22\)](#) apply.

Applicant was 23 years old at the time he submitted the SF 86 in 2004. In light of his past DUI conviction and probation period, his falsification cannot be attributed to youthful exuberance or stupidity. I have considered all Personal Conduct [\(23\)](#) Mitigating Conditions, and find that none apply. In light of all the facts and circumstances, I conclude Applicant's falsification is recent and that the motive that led him to falsify the SF 86 - i.e., his desire to cover up his past use of drugs - remains a viable factor that could influence Applicant's future behavior. Guideline E is decided against the Applicant.

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guidelines. A fair and commonsense assessment [\(24\)](#) [of the record before me reflects a man who is not fully attuned to what the government expects of persons it trusts with access to sensitive information](#). Considering all relevant and material facts and circumstances present in this case, including Applicant's testimony, the circumstances that caused his misconduct, the whole person concept, and the adjudicative factors listed in the Directive, I find Applicant has not mitigated his security concerns.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Drug Involvement (Guideline H) AGAINST THE APPLICANT

Subparagraphs 1.a-1.b Against the Applicant

Paragraph 2, Personal Conduct (Guideline E) AGAINST THE APPLICANT

Subparagraph 1.a Against the 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 the Applicant. Clearance is denied.

Juan J. Rivera

Administrative Judge

1. Required by Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960, as

amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992) (Directive), as amended.

2. Tr. 21.

3. Tr. 24.

4. Tr. 25.

5. Tr. 24.

6. Tr. 26.

7. GE 1.

8. Applicant was convicted of driving while intoxicated and placed on probation before judgment.

9. Tr. 36.

10. Tr. 20 and 35.

11. Tr. 35.

12. Tr. 40 - 41.

13. Directive, Section 6.3. Each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate: the nature and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the age of the applicant; the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation; and the probability that the circumstances or conduct will continue or recur in the future.

14. Directive, E2.2.1.

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

16. *Id.* at 528, 531.

17. *See Egan*; Directive E2.2.2.

18. Directive, E2.A8.1.1.1.

19. Directive, E2.A8.1.2.1.

20. Directive, E2.A5.1.1.

21. Directive, E2.A5.1.2.2.

22. Directive, E2.A5.1.2.4.

23. Directive, E2.A5.1.3.

24. Directive, E2.2.3.