

DATE: December 29, 2006

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In re:

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SSN: -----

Applicant for ADP I/II/III Position

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ADP Case No. 06-14120

## **DECISION OF ADMINISTRATIVE JUDGE**

**CHRISTOPHER GRAHAM**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Julie R. Edmunds, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a 25-year-old insurance specialist employed by a federal contractor. She used marijuana two times a year, at least once after she had signed a Public Trust Position Application, and was convicted in August 2005 of possession of marijuana. Since August 2005, she has not used marijuana. She gave a false answer to one question on her trustworthiness questionnaire. She provided no mitigating evidence to DOHA. She failed to mitigate the security concerns under Guideline H (drug involvement) and Guideline E (personal conduct). Applicant's eligibility for assignment to a sensitive position is denied.

### **STATEMENT OF THE CASE**

On January 2, 2005, and April 11, 2005, Applicant submitted a Public Trust Position Application (SF 85P). The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Regulation 5200.2-R, *Personnel Security Program*, (Jan. 1987), as amended and modified (the "Regulation"), and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On August 10, 2006, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleged facts under Guideline H (Drug Involvement) and Guideline E (Personal Conduct) of the Regulation.

On August 28, 2006, Applicant responded to the allegations in the SOR, and requested a decision without a hearing. Department Counsel submitted a file of relevant material (FORM) in support of the government's case, a copy of which was received by Applicant on October 2, 2006. The FORM contained a request by the government to amend the opening paragraph of the SOR, by striking the language "*paragraph 3-614, Department of Defense Regulation 5200.2-R and paragraph 2.4.,*". On pages 2 and 3 of the FORM, the government requested to amend the SOR by adding a subparagraph 2.b. which states as follows:

You falsified material facts on a Questionnaire for Public Trust Positions, Standard Form SF 85P, executed by you

under date January 2, 2005 and April 11, 2005, in response to "**Question 21a. Illegal Drugs** In the last year, 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?" You answered "No" and deliberately failed to disclose that you had used marijuana in the year prior to executing your SF 85P.

Applicant was afforded the opportunity to file objections and submit material in refutation, extenuation, or mitigation by November 1, 2006. She filed no response. The government provided no legal basis for changing the guidelines, and I find there is none. The motion to strike a portion of the opening paragraph of the SOR is denied. The motion to amend the SOR to add new subparagraph 2.b., as set forth on pages 2 and 3 of the FORM, is granted. The case was assigned to me on December 13, 2006.

### **FINDINGS OF FACT**

Applicant admitted the allegations in SOR subparagraph 1.a., 1.b., and 1.c. She denied the allegation in subparagraph 2.a. As she did not respond to the FORM, she made no answer to subparagraph 2.b. Her admissions are incorporated herein as findings of fact. I make the following additional findings of fact.

Applicant is a 25-year-old employed by a federal contractor. <sup>(1)</sup> She is single, has one child, has a high school diploma, has no military service, and is seeking her first public trust position. <sup>(2)</sup>

Applicant used marijuana, with varying frequency, at times twice yearly to at least August 2005. She continued to use marijuana notwithstanding that she had submitted an application for a position of trust on January 2, 2005, which was re-signed by her on April 11, 2005. <sup>(3)</sup> On August 13, 2005, she was charged with possession of marijuana. She was found guilty and fined \$109.75.

Applicant falsified material facts on a Questionnaire for Public Trust Positions, Standard Form SF 85P, executed by her under date January 2, 2005, and April 11, 2005. In response to "**Question 21a. Illegal Drugs** In the last year, 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?" she answered "No" and failed to disclose that she had used marijuana in the year prior to executing her SF 85P. <sup>(4)</sup>

In her answer to the SOR, subparagraph 2.a., Applicant wrote:

I deny, because I no longer use marijuana. If I did continue to use after August 2005, it could raise an issue of Guideline E. It is not a part of my life, therefore there is no questionable judgment and I can be trusted. Although the statement of reasons are true as of those dates, I no longer use marijuana and have not since those dates. When I received the fine, it was a definite eye-opener. I have responsibilities to hold up to including my duties as an employee and also as a mother of a four-year-old. I admit I made a mistake and I did learn my lesson. <sup>(5)</sup>

### **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." <sup>(6)</sup> Applicants are eligible for an ADP I/II/III position "only upon a finding that it is clearly consistent with the national interest to do so." <sup>(7)</sup>

DoD Regulation 5200.2-R sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the trustworthiness of an applicant, the administrative judge must also assess the adjudicative process factors: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved;

absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future.<sup>(8)</sup> The decision to deny an individual eligibility for assignment to an ADP I/II/III position is not necessarily a determination as to the loyalty of the applicant.<sup>(9)</sup> It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for granting eligibility.

## CONCLUSIONS

### **Drug Involvement**

The security concern raised under Guideline H (Drug Involvement) is that "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." Drug abuse is defined as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction."<sup>(10)</sup>

Drug Involvement Disqualifying Condition (DI DC)1 (*Any drug abuse*) and DI DC 2 (*Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*) are both applicable. Applicant admitted her wrongful use of marijuana and she was found guilty of possession of marijuana.

Various conditions can mitigate the trustworthiness concerns arising from drug involvement. Drug Involvement Mitigating Condition (DI MC) 1 (*The drug involvement was not recent*) and DI MC 3 (*A demonstrated intent not to abuse any drugs in the future*). As she was convicted a little over a year ago, the conduct is recent. She has stated her intent not to abuse drugs further. However, only one year has elapsed and Applicant provided no proof of any rehabilitative progress. Her use of marijuana one or two times after she signed her SF 85P is an indication of poor judgement.

### **Personal Conduct**

The security concern under Guideline E (Personal Conduct) is that "conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the applicant may not properly safeguard classified information."<sup>(11)</sup>

Personal Conduct Disqualifying Condition (PC DC) 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*) applies because Applicant's answer to one question on the SF 85P was not truthful.

Personal Conduct Mitigating Condition (PC MC) 2 (*The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*) is the only possible mitigating condition that might apply. Applicant lied on an official document in January and April 2005. I conclude the conduct was a recent, therefore this mitigating condition does not apply. No other mitigating conditions are applicable.

### **Whole Person Analysis**

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 an ADP I/II/III position. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a determination. In evaluating Applicant's case, in addition to the disqualifying and mitigating conditions, I also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests.<sup>(12)</sup> I considered her age (25), her education, her employment, and what might motivate her to lie. This case raises questions about her reliability, judgment, and honesty. Applicant supplied a false answer on a public trust application. This is problematic because candor with the government about a person's negatives is the crux of a trustworthiness determination. Applicant's reason for withholding the negative information was done in an effort to keep her job. She lied to enhance her chances of obtaining a public trust position.

Applicant is still quite young and apparently has not matured sufficiently to guarantee that such activity will not happen in the future. Applicant must show that her judgment has improved and she has not done so. She did not mitigate her conduct, because she failed to provide any evidence to DOHA. The totality of the record raises reasonable and persistent doubts about Applicant's ability to protect sensitive information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. I conclude Guideline H and Guideline E against Applicant. Applicant is not qualified for a favorable eligibility determination.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline H: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

### **DECISION**

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant Applicant's eligibility for assignment to a sensitive position. Eligibility is denied.

Christopher Graham

Administrative Judge

1. Item 4 (Public Trust Position Application (SF 85P), dated January 2, 2005, resigned April 11, 2005) at 1,6.

2. *Id.* at 7-8.

3. Item 3 (Answer to SOR, dated August 28, 2006) at 1.

4. Item 4, *supra*, note 1, at 9.

5. Item 3, *supra*, note 3, at 1-2.

6. <sup>0</sup>*Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

7. <sup>0</sup>DoD Regulation 5200.2-R, ¶ CG.1.1.

8. Regulation, Appendix 8, at 132.

9. <sup>0</sup>*See* Exec. Or. 10865 § 7.

10. Regulation, Appendix 8.

11. *Id.*

12. *Id.*