

KEYWORD: Drugs

DIGEST: Applicant is a 27-year-old research assistant employed by a government contractor. She failed to mitigate the overall lack of judgment, reliability, and ability or willingness to comply with laws, rules, and regulations raised by her history of abusing controlled substances. Clearance is denied.

CASENO: 06-24620.h1

DATE: 04/24/2007

DATE: April 24, 2007

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In re:	)	
	)	
-----	)	ISCR Case No. 06-24620
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
_____	)	

**DECISION OF ADMINISTRATIVE JUDGE  
JUAN J. RIVERA**

**APPEARANCES**

**FOR GOVERNMENT**

Emilio Jaksetic, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 27-year-old research assistant employed by a government contractor. She failed to mitigate the overall lack of judgment, reliability, and ability or willingness to comply with laws, rules, and regulations raised by her history of abusing controlled substances. Clearance is denied.

### **STATEMENT OF THE CASE**

On December 28, 2006, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline H (Drug Involvement). 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 her access to classified information and recommended that her case be submitted to an administrative judge for a security determination.<sup>1</sup> On January 17, 2007, Applicant answered the SOR (Answer), and requested a hearing.

The case was assigned to me on February 21, 2007. On March 21, 2007, I convened a hearing at which the government presented one exhibit, marked GE 1, to support the SOR. Applicant testified on her own behalf, and presented no witnesses or exhibits. DOHA received the transcript (Tr.) on March 30, 2007.

### **PROCEDURAL ISSUES**

The government moved to amend<sup>2</sup> the second line of SOR ¶ 1.a, by deleting “January 2006” and substituting therefore, “February 2007.” I granted the government’s motion without objection. (Tr. 67-69)

Applicant objected to the phrase “with varying frequency” in SOR ¶ 1.a, and moved to amend the allegation to read “You have used marijuana between zero and three times from approximately June 1999 until the summer of February 2005. You have used it once in January 2006 and once in February 2007.” Department counsel objected, and I denied her motion. (Tr. 69-73) The allegation, as drafted, fairly encompassed the proposed language. It placed Applicant on ample notice of the allegations against her, and allowed her to present both a meaningful response to the SOR and a well-prepared defense during the hearing.<sup>3</sup>

### **FINDINGS OF FACT**

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<sup>1</sup> See 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. On August 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised adjudicative guidelines (Guidelines) to all adjudications and other determinations made under the Directive in which the SOR was issued on or after September 1, 2006.

<sup>2</sup> The government’s motion was made pursuant to Directive, Additional Procedural Guidance ¶ E3.1.17, to conform the allegations with her testimony.

<sup>3</sup> ISCR Case No. 02-17219 at 4 (App. Bd. Jan. 7, 2005.)

Applicant admitted all SOR allegations with explanations. Her admissions to the SOR allegations are incorporated herein as findings of fact. After careful consideration of the evidence and Applicant's demeanor and testimony, I make the following additional findings of fact:

Applicant is a 27-year-old research assistant. She is single and has no children. From 1998 to 2002, she attended a prestigious university in the United States, receiving a bachelor of science degree in Physics with and a minor in Political Science. While in college, she worked as an environmental activist raising funds for national parks, as a research assistant to professors, as a federal contractor (from June to August 2001), and as a legal secretary. She also traveled extensively throughout Europe. After college, she worked as a research assistant, traveled to Russia as a counselor, traveled to the Middle East, worked as a bartender, and traveled to the Palestinian territories (from August 2004 to October 2004). She has worked for a defense contractor since April 2004 and needs access to classified information to keep her position.

During the summer of 1999, Applicant left home to live with relatives and work as an environmental activist raising funds for national parks. Although 19 years old, this was her first time outside of parental supervision. Her co-workers and newly acquired friends were habitual drug users and she was introduced to the use of illegal drugs. During that summer, she tried marijuana for the first time. She used marijuana socially three to four times a week during the months of June, July, and August 1999. (Tr. 29-31) She and her friends would get together socially, and someone would circulate a pipe full of marijuana or a marijuana cigarette around the room/group and she would smoke the marijuana.

During that same summer, Applicant experimented with LSD once, ecstasy twice, and hallucinogenic mushrooms (mushrooms) twice. She went to a concert with a friend. Her friend offered her LSD and she knowingly accepted the drug. She suffered hallucinations and visual shift of perception. She was concerned and scared after her experience with LSD. (Tr. 46) She has never been offered or used LSD since. (Tr. 31-32) She intends to never use LSD again.

In the summer of 1999, she used ecstasy twice, at a house party and during a camping trip. Her use of ecstasy was under circumstances similar to her use of marijuana. Someone in the social group would have a container with the ecstasy pills, and offer them to the group. She knowingly ingested the ecstasy. She has not been offered or used ecstasy since the Summer of 1999. (Tr. 33-35)

Applicant also knowingly attended a party designed specifically for people to use mushrooms, and she used the mushrooms. She hallucinated so strongly that she lost contact with reality and was extremely surprised to wake up the next morning alive and healthy. (Tr. 49) Applicant used mushrooms again in the Spring of 2000. A different group of friends planned a camping trip specifically to use mushrooms. She knowingly attended the camping trip and used mushrooms. (Tr. 34-35, 54) She no longer has contact with any of the friends with whom she shared the mushrooms. (Tr. 55)

From June 2002 to February 2005, Applicant did not use drugs. Between February 2005 and December 2005, Applicant used marijuana four times. During that period of time, she was working in a middle-eastern country and took her vacations in a Bedouin village. She was offered marijuana cigarettes socially by the Bedouins, and she accepted their offers and smoked marijuana four times.

(Tr. 36-38) She is still in contact with one of her friends that smoked marijuana with her in the Bedouin village.

Applicant used marijuana again in January 2006. Upon her return to the United States from the middle-east, she moved in with a couple of friends from college who were habitual marijuana users. She used marijuana one time. She testified, “I had many opportunities before and after that smoke, and I refused.” (Tr. 40-41) Applicant estimated that since January 2006, she has been offered marijuana approximately 10 times. Once at a bar, another time at a house party (in October 2006), and approximately eight times at her college friend’s apartment. (Tr. 63) People were using marijuana in her presence during those ten times. She still visits with one of her marijuana-smoking friends who lives in the area.

Applicant submitted her security clearance application in April 2004. She was forthright and candid in her answers and disclosed all of her illegal drug use as alleged in the SOR and the circumstances that led to such use. She stated that after her use of marijuana in January 2006, she no longer enjoyed it, and had not use marijuana since. She further stated: “I don’t plan on using any of these drugs again.”<sup>4</sup> Moreover, in her January 17, 2007, response to the SOR she also stated: “To be very clear: I do not plan to use any of these drugs in the future.”

Applicant smoked marijuana again in February 2007. (Tr. 42-43) She explained that after her lease expired, she attended an open house looking for a place to live. The people hosting the open house passed a marijuana cigarette among their guests. She accepted the offer and smoked the marijuana. There were other people at the open house, and this was the first time she had ever met the hosts or any of the guests. (Tr. 45)

Since her college years, Applicant has known that the use of marijuana, LSD, ecstasy, and mushrooms was illegal. She stated she became aware while filling out her security clearance application that the government would be concerned about her past drug use. When asked why she used marijuana again in February 2007 if she was aware of the government’s concerns, she replied: “It was a bad decision for which I have no ready excuse, Your Honor.” (Tr. 66)

## **POLICIES**

The Directive sets forth adjudicative guidelines which must be considered in evaluating an Applicant’s eligibility for access to classified information. Foremost are the disqualifying and mitigating conditions under each adjudicative guideline applicable to the facts and circumstances of the case. However, the guidelines are not viewed as inflexible ironclad rules of law. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive, and the whole person concept.<sup>5</sup>

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<sup>4</sup> GE 1, question 24.

<sup>5</sup> Directive, E2.2.1. “. . . The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. . . .” The whole person concept includes the consideration of the nature and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the age of the

Having considered the record evidence as a whole, I conclude Guideline H (Drug Involvement) is the applicable relevant adjudicative guideline.

### **BURDEN OF PROOF**

The purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.<sup>6</sup> The government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the government must establish a prima facie case by substantial evidence.<sup>7</sup> 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 the burden of persuasion.<sup>8</sup>

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.<sup>9</sup>

### **CONCLUSIONS**

Under Guideline H (Drug Involvement), use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.<sup>10</sup>

Applicant's admissions to the SOR allegations and her testimony establish she experimented with LSD (once), ecstasy (twice), and hallucinogenic mushrooms (twice) in 1999-2000. She used marijuana approximately 40 times from June 1999 to June 2002. Most of her use of marijuana was during the Summer of 1999 when she used marijuana three to four times a week. After that summer,

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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.

<sup>6</sup> See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>7</sup> ISCR Case No. 98-0761 at 2 (App. Bd. Dec. 27, 1999) (Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.); ISCR Case No. 02-12199 at 3 (App. Bd. Apr. 3, 2006) (Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.); Directive, ¶ E3.1.32.1.

<sup>8</sup> *Egan*, *supra* n.9, at 528, 531.

<sup>9</sup> Directive E2.2.2.

<sup>10</sup> Guidelines, ¶ 24.

she used marijuana three to four times a year until June 2002. Applicant did not use marijuana from June 2002 to February 2005. From February 2005 to the day of the hearing, Applicant used marijuana six times. The last two times she used marijuana were in January 2006, at age 26, and February 2007, at age 27. Guideline H Disqualifying Condition (DC) 25(a): *any drug abuse*, and DC 25(h): . . . *failure to clearly and convincingly commit to discontinue drug use*, apply.

There are four Drug Involvement Mitigating Conditions (DI MC) under Guidelines ¶ 26(a)-(d):

*(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;*

*(b) a demonstrated intent not to abuse any drugs in the future, such as:*

*(1) disassociation from drug-using associates and contacts;*

*(2) changing or avoiding the environment where drugs were used;*

*(3) an appropriate period of abstinence;*

*(4) a signed statement of intent with automatic revocation of clearance for any violation;*

*(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended;*

*(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.*

I considered all Guideline H Mitigating Conditions (MC) and I conclude none apply. Considering the totality of the circumstances of her case, I find Applicant's drug involvement to be recent, not isolated, and as such, it cannot be attributed to youthful ignorance. She is a mature, intelligent, and a well-educated person who knew or should have known about the criminal consequences of her behavior and the seriousness of her actions, but still chose to abuse controlled substances.

While filling out her security clearance application, she was warned of the government's concerns about her illegal drug use. In the security clearance application and in her answer to the SOR, she promised not to use drugs again. Notwithstanding, she used marijuana in February 2007. Her use of marijuana in 2007 is troubling considering she has been working for a federal contractor since April 2006, and she answered the SOR (outlining the government's drug involvement concerns) on January 17, 2007. Applicant demonstrated she lacked judgment by taking drugs from complete strangers on several occasions, placing herself at risk of criminal charges and risking her life. Ultimately, her overall behavior demonstrates she lacks judgment and reliability, and places serious doubts in her ability to protect classified information.

Applicant's has continued her association with drug-using friends and is not avoiding the environment where drugs are used. As such, her behavior precludes a finding that she has demonstrated her intent not to use drugs in the future. (Guidelines ¶ 26(b)) Her promises to abstain from illegal drugs in the future ring hollow in light of her past behavior and empty promises. I find Guideline H against the Applicant.

I have carefully weighed all evidence, and I applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guidelines. I specifically considered Applicant's age, education, level of maturity, and her approximately three years working for a defense contractor. As previously discussed, Applicant's overall past behavior forms a pattern of disturbing drug use with significant adverse security implications. Applicant failed to present sufficient evidence to mitigate the overall lack of judgment, reliability, and ability or willingness to comply with laws, rules, and regulations raised by her behavior.

### **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)  
Subparagraphs 1.a - 1.d

AGAINST APPLICANT  
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.

Juan J. Rivera  
Administrative Judge