

DATE: November 28, 2007

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In Re:

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SSN: -----

Applicant for Security Clearance

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) ISCR Case No. 07-02253  
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**DECISION OF ADMINISTRATIVE JUDGE  
JOHN GRATTAN METZ, JR**

**APPEARANCES**

**FOR GOVERNMENT**

Ray T. Blank, Jr., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

\_\_\_\_ Applicant's deliberate falsifications on his July 2004 clearance application, and the drug abuse history he concealed, render him unsuitable for a security clearance. Clearance denied.

**STATEMENT OF THE CASE**

Applicant challenges the 19 July 2007 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of drug involvement and personal conduct.<sup>1</sup> He answered the SOR 21 August 2007, and requested a hearing.

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<sup>1</sup>Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended and modified—most recently in August 2006 (Directive).

DOHA assigned the case to me 2 October 2007, and I convened a hearing 2 November 2007. DOHA received the transcript (Tr.) 13 November 2007.

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### **FINDINGS OF FACT**

\_\_\_\_\_Applicant admitted the SOR allegations. Accordingly, I incorporate his admissions as findings of fact. He is a 43-year-old senior professional staffer, employed by a defense contractor since August 2001. He seeks to retain the security clearance he obtained fraudulently in 2001.

When Applicant applied for a job with his current employer, he falsified his employment application by denying any history of illegal drug use. He passed a company pre-employment drug screen—which he knew was required—by abstaining from marijuana use far enough in advance of the test to test negative.<sup>2</sup> Shortly after going to work for this employer, Applicant applied for an industrial security clearance. He deliberately concealed his drug use by answering “no” to questions designed to elicit any illegal drug use. Based on his false answers, Applicant was granted an interim secret clearance, and ultimately his permanent secret clearance. In 2002, Applicant applied for a clearance upgrade to top secret. Again he answered “no” to questions designed to elicit his illegal drug use, and again he obtained first his interim top secret, then his permanent top secret (November 2002), clearances. His background investigation for top secret access required a subject interview, during which he confirmed his false answers to the drug questions.<sup>3</sup>

In July 2004, Applicant applied for a clearance upgrade to top secret/special compartment information (TS/SCI)(G.E. 1) and continued to conceal his drug use by answering “no” to questions 27 (illegal drug use, last seven years), 28 (illegal drug use while possessing a security clearance), and 29 (illegal drug purchases). In fact, he had used marijuana from 1980 through 2004 on a recreational basis—the equivalent of an evening cocktail after getting home from work. His heaviest marijuana use has been since 1986, during which time he estimates he used marijuana approximately 150 times per year. He also purchased marijuana 50-60 times over the years, spending thousands of dollars. He used cocaine twice (once with his wife) between 1986 and 1989. Applicant acknowledged that he falsified his clearance applications because he did not want his employer and the government to know about his drug abuse history.

As part of the process for obtaining special access, Applicant was scheduled for a lifestyle polygraph required by another government agency in conjunction with his July 2004 application. During the pre-examination interview, he disclosed that he had used marijuana, but dissembled on the recency and frequency of that use. During the post-examination interview, Applicant disclosed the full extent of his drug use after being confronted by the polygrapher. Applicant underwent a second polygraph in May 2005, apparently with satisfactory results.

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<sup>2</sup>Applicant similarly falsified an employment application and defeated a pre-employment drug screen for his previous employer, as well as a prospective employer he interviewed with but did not go to work for.

<sup>3</sup>These two clearance applications, and the results of the subject interview, are not in the hearing record, and, for that reason, there are no SOR allegations based on these facts. I include these facts both as evidence of Applicant’s poor credibility, and as a necessary portion of the narrative to place the SOR allegations in context.

Applicant accepts full responsibility for his drug use, and acknowledges the invalidity of his past rationalizations: that it was no more than the equivalent of an evening cocktail, and the government could not or should not really be concerned about his level of drug use. He did, however, understand that drug use was illegal and prohibited by employer and governmental policies.

Applicant states that he has not used any illegal drugs since August 2004, and vows never to use illegal drugs again. He used marijuana largely in the privacy of his home (in the master bedroom while his two children, ages 12 and seven were downstairs). However, he also used marijuana with his wife. She was a sporadic user with Applicant, and used cocaine with him on one occasion in the late 1980's. She stopped using marijuana some time ago, and vouches (A.E. A) for his being drug free since September 2004.

Applicant has an excellent work record (A.E. B). His two company character references, both of whom testified and provided sworn statements (A.E. A), praised the quality of his work, his trustworthiness, and his integrity. Tellingly, neither of them was aware of the issues in this case. One of them had given Applicant the option of telling him or not. Applicant opted not. Both witnesses testified that it was important to be truthful on clearance applications, and they would have serious issues with an employee who was untruthful.

### **POLICIES AND BURDEN OF PROOF**

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline H (Drug Involvement) and Guideline E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest"

standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>4</sup>

## CONCLUSIONS

\_\_\_\_\_The government established a case for disqualification under Guideline H,<sup>5</sup> and Applicant failed to mitigate the security concerns. Applicant's use and purchase of marijuana for more than 24 years are neither distant in time nor infrequent.<sup>6</sup> His abstinence from drug use—just over three years—is inadequate to demonstrate an intent to refrain from drug use in the future in the context of this case.<sup>7</sup> I cannot conclude Applicant is unlikely to use illegal drugs in the future. Accordingly, I resolve Guideline H against Applicant.<sup>8</sup>

The government established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns. He deliberately concealed his illegal drug use from the government.<sup>9</sup> He did so knowing that his illegal drug use was prohibited by both company and governmental policies. But for the polygraph examination, he might never have disclosed the truth. Further, none of the Guideline E mitigating conditions apply. The concealed information was relevant to a clearance decision. Applicant's falsifications prohibited the government from evaluating his illegal drug use in a timely fashion, and at a time when such recent drug use would have raised even more significant security concerns. In addition, the government detrimentally relied on Applicant's falsifications in granting his clearances on two separate occasions. Finally, his disclosure of illegal drug use when confronted during his polygraph was neither prompt nor forthright. Indeed, for practical purposes, it was forced from him.

Applicant's Answer clearly establishes that he intended to conceal his illegal drug use from the government and effect the course of his background investigation, whether he was successful in effecting the course of his investigation or not. However, in this case his falsifications did influence the investigation, and he was granted his clearance, on two occasions.

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<sup>4</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>5</sup>¶25.(a) any drug abuse. . . ; (c) illegal drug possession, including. . . purchase. . . ; (c) any illegal drug use after being granted a security clearance;

<sup>6</sup>¶26.(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;

<sup>7</sup>¶26.(b). a demonstrated intent not to abuse any drugs in the future, such as; . . . (3) an appropriate period of abstinence;

<sup>8</sup>However, Applicant's experimental use of cocaine in the mid-1980s is sufficiently remote to warrant a favorable finding on SOR 1.c.

<sup>9</sup>¶16.(a) 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, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

Applicant's failure to disclose his illegal drug use demonstrates a lack of candor required of cleared personnel. The government has an interest in examining all relevant and material adverse information about an Applicant before making a clearance decision. The government relies on applicants to truthfully disclose that adverse information in a timely fashion, not when it is perceived to be prudent or convenient. Further, an applicant's willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the government relies on to perform damage assessments and limit the compromise of classified information. Applicant's conduct demonstrates he is willing to put his personal needs ahead of legitimate government interests. I resolve Guideline E and J against Applicant.

### **FORMAL FINDINGS**

Paragraph 1. Guideline H:      AGAINST APPLICANT

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Subparagraph a:	Against Applicant
Subparagraph b:	Against Applicant
Subparagraph c:	For Applicant
Subparagraph d:	Against Applicant

Paragraph 2. Guideline E:      AGAINST APPLICANT

Subparagraph a:	Against Applicant
Subparagraph b:	Against Applicant
Subparagraph c:	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 denied.

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**John G. Metz, Jr.**  
**Administrative Judge**