

DATE: October 18, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 07-02832

**DECISION OF ADMINISTRATIVE JUDGE
CAROL G. RICCIARDELLO**

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

____ Applicant is a 22-year-old college student. She has a history of illegal drug use, including using marijuana after she applied for a security clearance and while employed by a federal contractor. She has made a commitment to abstain from future drug use. However, under the circumstances not enough time has elapsed to ensure she has reached a level of maturity to maintain her commitment. Applicant failed to mitigate the security concerns raised by Guideline H, Drug Involvement. Clearance is denied.

STATEMENT OF CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan.2, 1992), (Directive), as amended, DOHA issued a Statement of Reasons (SOR) on June 8, 2007, detailing the basis for its decision-security concerns raised under Guideline H, drug involvement of the revised Adjudicative Guidelines issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006.¹

In a sworn statement dated July 17, 2007, Applicant responded to the SOR allegations. Applicant elected to have her case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on July 26, 2007. The FORM was mailed to Applicant on July 31, 2007, and received on August 18, 2007. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded in September 2007 (no specific date was on the response). The case was assigned to me on October 5, 2007.

FINDINGS OF FACT

____ Applicant is a 22-year-old college student studying engineering. She graduated from high school in May 2004. She began college in August 2004 and anticipates earning a degree in mechanical engineering in May 2008. She began working for a federal contractor when she was in high school and worked June 2003 to August 2004, June 2004 to August 2004, May 2005 to August 2005, and May 2006 to July 2006. She has been offered full time employment with the same federal contractor upon graduation.

Applicant admitted she used marijuana approximately 50 times from June 2003 through September 2006. She submitted her security clearance application on July 11, 2006. She admitted she used ecstasy in about July 2006 while she was employed by a federal contractor. She admitted she continued to use marijuana after she applied for a security clearance.² She minimizes her drug use by stating that most of her drug use was in high school, "dropping almost completely" when she entered college, and her "road to abstinence began in 2004."³ This contradicts her admissions to using drugs until at least September 2006. Applicant's explanation regarding her use of ecstasy in July 2006, while employed by a federal contractor, was that it was "a one-time lapse in judgment that will not be repeated."⁴ Applicant believes she now has professional goals that have "ignited change" in her life.⁵ She stated: "Over the course of my college career, I feel that I have made a sincere

¹This action was taken under Executive Order 10865, dated February 20, 1960, as amended.

²GE 3.

³Supplement Answer dated Sept. 2007.

⁴GE 3.

⁵*Id.*

commitment to amending my past indiscretions while showing maturity, accountability, and responsibility.”⁶

Applicant stated she has never been diagnosed with drug dependency or abuse.⁷ She did not provide information as to whether she has actually been tested in this regard. She stated in her July 2006 answer to the SOR that she has not used marijuana “in nearly a year.” She also stated she has a “new found respect for the laws prohibiting its use.” She stated she is a different person now with a new set of priorities. She does not intend to use drugs in the future.⁸ In response to interrogatories, Applicant was asked if she associated with persons who use illegal substances or frequent places where she believes illegal substances are being used or are used in her presence. Her response was “I am still in college. No matter what social scene I go to, there are probably drugs (usually in private, unknown to me). Marijuana is especially prevalent. Also, I am an avid concert-goer, where smoking definitely takes place. However, even if my peers are using drugs, I feel no desire to join them.”⁹ She also admitted that she consumes alcohol and was last intoxicated on whiskey in February 2007.¹⁰

Applicant is highly regarded by one of her professors who also served as her internship supervisor. He characterizes her as a reliable, hardworking, self-sufficient, respectable student and citizen. Due to her civility and leadership, she was elected president of the college’s chapter of a prestigious engineering society. She has helped motivate other students in their professional development, volunteered to help start a chapter of the society at another college, and has gained the respect of her classmates and professors.¹¹ Applicant’s supervisors while she was employed describe her as confident, capable, intelligent, responsible, detail-oriented, and highly motivated. She is a fast learner, clear communicator, who worked well independently, and her work product was exceptional. She was able to understand complex problems and worked with little guidance. She was impressive in planning, analyzing data and overcoming problems throughout the projects. She was given two excellence awards during a twelve week tenure. Applicant was considered professional , courteous and very personable.¹²

POLICIES

⁶*Id.*

⁷GE 3.

⁸*Id.*

⁹GE 5.

¹⁰*Id.*

¹¹Supplemental Answer Sept. 2007, Enclosure (unmarked). All comments in this paragraph are attributed to the same document.

¹²*Id.* These comments are attributed to other Enclosures in her Supplemental Answer.

“[N]o one has a ‘right’ to a security clearance.”¹³ As Commander in Chief, 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.”¹⁴ The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”¹⁵ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”¹⁶ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹⁸ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.¹⁹ 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.²⁰

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information.²¹ “Substantial evidence” is “more than a scintilla but less than a preponderance.”²² The Guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.²³

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.²⁴ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant

¹³*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹⁴*Id.* at 527.

¹⁵Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

¹⁶ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹⁷*Id.*

¹⁸*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

¹⁹Executive Order 10865 § 7.

²⁰*See* Exec. Or. 10865 § 7.

²¹*See Egan*, 484 U.S. at 531.

²²*See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

²³*See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996)

²⁴*See* Directive ¶ E3.1.15.

or continue his security clearance.”²⁵ “[S]ecurity clearance determinations should err, if they must, on the side of denial.”²⁶

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 facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

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

Drug Involvement

Drug involvement is security concern because 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.

I have considered all of the Drug Involvement Disqualifying Conditions (DI DC) and especially considered DI DC 25(a) (*any drug abuse*²⁷) and 25 (d) (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*). Applicant admitted she used illegal drugs from June 2003 through September 2006. In order to use illegal drugs she had to possess them. I find both disqualifying conditions apply.

I have considered all of the Drug Involvement Mitigating Conditions (DI MC) especially considered DI MC 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*), DI MC 26 (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*). Applicant stated she last used illegal drugs in September 2006. Her last use occurred after she applied for a security clearance. She also admitted using drugs while she was employed by a federal contractor. Applicant is obviously a smart young woman with unlimited career potential. She refers to her use of ecstasy as a one-time error in judgment. She makes no reference to the 50 other

²⁵ISCR Case No. 01-207000 at 3 (App. Bd. Dec. 19, 2002)

²⁶*Egan*, 484 U.S. at 531; *see* Guidelines ¶ 2(b).

²⁷Drug abuse is defined in the Adjudicative Guidelines 24 (b): drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

times she used marijuana and her judgment in this regard. She stated her “road to abstinence began in 2004.” She confuses abstinence, which is to refrain from doing something, from perhaps her reduction in consumption. Either she abstained from using illegal drugs or she did not. She admitted she did not. It has been barely a year since her conversion to abstinence. She admits she still associates with peers who use drugs, but does not feel the need to join in. It does not appear that she appreciates the illegality of their conduct and the risk she takes by being with them. She did not offer any evidence that she intends on avoiding places where drugs are used, or avoiding peers who use drugs, rather she sees this as a part of her college life that apparently she believes is unavoidable. Applicant remains part of the culture that accepts illegal drug use and she is passive to the illegality of drug use by her peers. Applicant is either unable or unwilling to extricate herself from the people and places where drugs are prevalent. Because she has signed a statement that she is willing to have a security clearance automatically revoked if she uses illegal drugs and her recent commitment to abstaining from their use, I find that DI MC 26 (b) partially applies.

I have also considered the amount of time that has elapsed since Applicant stated she has abstained from using drugs, along with the circumstances of her use, and her environment. Although it appears that Applicant is moving along in the maturation process and now realizes her actions can have serious ramifications, I find that under the circumstances, not enough time has elapsed to prove that she is truly committed to abstinence and that she can avoid the peer pressure of those with whom she associates and use drugs. Applicant may now be truly committed to abstinence, but she was still using drugs after she applied for a security clearance. She was aware when she filled out her security clearance application that illegal drug use was a concern. Despite that and for whatever reason she continued her use of marijuana. She was a valued employee who was respected by her supervisors, but while working for them, she used ecstasy, an illegal drug. Applicant’s judgment and maturity raise serious security concerns. Although she has made a commitment to abstain from illegal drug use, it is still unclear whether she has reached a maturity level that she can maintain and make good decisions without succumbing to the college atmosphere that she described. I find not enough time has elapsed to show a sustained maturity level and commitment to abstinence. Under the circumstances and at this time, I can not find that her actions are unlikely to recur and not enough time has elapsed since her last drug use. Therefore, I find DI MC 26 (a) does not apply. Although I find DI MC 26 (b) partially applies it is not enough to overcome the security concerns raised.

The Whole Person Analysis

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 their 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.

In addition to considering the specific disqualifying and mitigating conditions under the Guidelines, I have also considered the adjudicative process factors listed in ¶ 2a (1)-(9) of the Guidelines to be considered in evaluating a person’s eligibility to hold a security clearance.

Specifically these are: (1) the nature, extent and seriousness of the conduct; (2) the circumstances and surrounding the conduct to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation was voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the Guidelines should be followed whenever a case can be measured against this policy guidance.

I considered all evidence provided and considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I considered Applicant's age and maturity and the circumstances surrounding her participation in using illegal drugs. I considered how often she used them and when she used them in relation to her security clearance application and while employed. After weighing the disqualifying and mitigating conditions under Guideline H and evaluating the evidence in the context of the whole person, I conclude Applicant has failed to mitigate the security concerns raised by the drug involvement 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 is 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

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