



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 07-04494
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
John B. Glendon, Esquire, Department Counsel
For Applicant: Leslie J. McAdoo-Gordon, Esquire

January 31, 2008

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 25 September 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E and J.¹ Applicant answered the SOR 15 October 2007, and requested a hearing. DOHA assigned the case to me 16 November 2007, and I convened a hearing 11 December 2007. DOHA received the transcript (Tr.) 3 January 2008.

¹DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Findings of Fact

Applicant admitted the SOR allegations. Accordingly, I incorporate his admissions as findings of fact. He is a 23-year-old mechanical engineer employed by a defense contractor since March 2006. He had previously interned for this employer during college breaks in summer 2004, summer 2005, and winter 2005-2006. He seeks to retain the security clearance he obtained fraudulently in April 2006.

When Applicant first applied for an industrial clearance in December 2005 (G.E. 1), he deliberately concealed his marijuana use during summer 2001 and fall 2004 by answering “no” to question 24 (illegal drug use, last seven years). In fact, he had used marijuana at least four times each during summer 2001 and fall 2004.² Based on his false answers, Applicant obtained his clearance in April 2006 (G.E. 3).

Before starting full-time employment, Applicant’s company nominated him for a higher level of clearance, and he completed a second clearance application in May 2006 (G.E. 2). Again, he deliberately concealed his marijuana use by answering “no” to question 24. Based on his false answers, Applicant obtained an interim upgraded clearance in July 2006 (G.E. 3).

Applicant had been nominated for a higher level of clearance in expectation that he would eventually be given access to sensitive compartmented information (SCI). He knew that his background investigation would include a personal interview with an investigator, and eventually a polygraph examination. He realized that his drug use and falsifications might be an issue in the clearance process. He disclosed this information to his facility security officer (FSO), who advised him to prepare a written statement about the drug use and falsification, either to be sent to the government or taken by Applicant to his interview. On 26 September 2006, before he had been contacted by the investigator, he prepared a detailed account of his drug use and falsifications (A.E. A). In his letter, he acknowledged concealing his drug use because he was “very scared of admitting it to an authority figure and my parents.” During his interview on 17 October 2006, Applicant disclosed essentially the same information to the investigator, who noted Applicant’s stated fear of embarrassment and not getting his clearance as reasons for concealing his drug use (G.E. 4).

Applicant stated that he falsified his December 2005 clearance application because he was completing the application on-line, at home, with his mother looking over his shoulder. She knew all the details of Applicant’s life required by the application, and she had previously helped him with similar forms. When they came to the drug question, she just assumed the answer was “no” and Applicant did not contradict her, he just clicked “no.” Similarly, when he was completing his May 2006 clearance application, he was on-line, in his college dormitory room, but was on the telephone with

²The extent of Applicant’s marijuana use is unimportant to this case, except that it was relevant and material to his clearance applications in December 2005 and May 2006 and was sufficiently significant that it would likely have resulted in further investigation into his drug use.

his mother getting necessary updates for the required information. In this case, he concealed his drug use because he knew he would be living at home after college and did not want to risk having his parents discover the printed copy of the application that he would have with him when he came home. However, he admits that having submitted the false answers, he took no action to disclose them to his employer until September 2006. And although there are no government records that would otherwise have disclosed his drug use, Applicant acknowledged that he has told some of his close friends about his drug use. He is remorseful for his falsifications.

Applicant's work references, who include the FSO, his supervisor, and the president of the company, consider Applicant an excellent employee and praise his honesty and integrity. All are aware of the drug and falsification issues in this case. All recommend Applicant for his clearance.

Policies

The Revised Adjudicative Guidelines (RAG) list factors 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 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 RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where 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 E (Personal Conduct) and Guideline J (Criminal 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.³

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

Analysis

The government established a case for disqualification under Guideline E and J, and Applicant did not mitigate the security concerns. He deliberately concealed his illegal drug use from the government.⁴ He did so knowing that his illegal drug use was of major security concern to the government, and believing that his clearance were at risk if he told the truth. Even crediting his claims that his principal reason for concealing his drug use was fear of his parents' reaction and he had no intention of misleading either his company or the government, the fact remains that he did mislead both his employer and the government, and collected benefits from his falsifications—obtaining first his initial clearance, then an interim upgrade.

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 might have raised significant security concerns. In addition, the government detrimentally relied on Applicant's falsifications in granting his clearance. Finally, while his disclosure of illegal drug use in October 2006 may have been forthright, it cannot be considered prompt. While I give Applicant some credit for coming forth on his own, that credit is diluted by several factors. It is irrelevant that no government records would have otherwise disclosed his drug use. Applicant's are expected to tell the government the truth anyway. In addition, the right references or developed references in his background investigation might have revealed his

Record evidence clearly establishes that Applicant intended to conceal his illegal drug use from the government and effect the course of his background investigation. This conduct violated 18 U.S.C. §1001,⁵ whether or not he was successful in effecting the course of his investigation. However, in this case his falsifications did alter the investigation, as he was granted his clearance.

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

⁴¶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. . . ;

⁵¶31.(a) a single serious crime or multiple lesser offenses; (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;

suggests he is willing to put his personal needs ahead of legitimate government interests. I resolve Guideline E and J against Applicant.

Beyond the specific guidelines alleged by the government, the generally applicable disqualifying and mitigating conditions lead to the same result. Falsifications are a core security concern [RAG ¶2(a)(1)]. His behavior was deliberate and not due to circumstances beyond his control [RAG ¶2(a)(2); RAG ¶2(a)(5)]. His misconduct was both recent and frequent [RAG ¶2(a)(3)]. I have considered Applicant's youth, but that consideration provides does not overcome the adverse inferences of his misconduct, honesty being a core requirement for access, and not a difficult concept to understand or hold Applicant's to [RAG ¶2(a)(4).] Rehabilitation or behavioral changes are difficult to measure under these circumstances, given the scrutiny Applicant has been under since his drug use came to light [RAG ¶ 2(a)(6)]. He clearly sought to mislead the government about his drug record, or was at least willing to benefit from his misconduct [RAG ¶2(a)(7)]. Applicant's willingness to put his personal needs ahead of legitimate government interests increases his potential vulnerability and he has not demonstrated that the misconduct is unlikely to recur [RAG ¶ 2(a)(8); RAG ¶ 2(a)(9)]. The concern is whether Applicant would disclose situations or circumstances, whether deliberate or inadvertent, that raise security concerns. Overall, the record evidence leaves substantial doubt about Applicant's eligibility and suitability for a security clearance. Accordingly, I conclude Applicant has not mitigated the security concerns arising from his falsifications.

Formal Findings

Paragraph 1. Guideline E: AGAINST APPLICANT

Subparagraph a: Against Applicant
Subparagraph b: Against Applicant

Paragraph 2. Guideline J: AGAINST APPLICANT

Subparagraph a: Against Applicant

Conclusion

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.

JOHN GRATTAN METZ, JR
Administrative Judge