

DATE: December 21, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 07-05012

**DECISION OF ADMINISTRATIVE JUDGE
NOREEN A. LYNCH**

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr. Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 27-year-old employee of a defense contractor who has a history of illegal drug use as recent as December 2004. He used illegal drugs while holding a security clearance. He failed to mitigate the security concerns raised under the drug involvement guideline. Applicant intentionally falsified his security clearance application. He has not mitigated the security concern under the personal conduct guideline. Applicant's eligibility for a security clearance is denied.

STATEMENT OF THE CASE

On June 23, 2005, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86). On July 20, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) stating that it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.¹ The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline H (Drug Involvement) and Guideline E (Personal Conduct) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued.

On September 7, 2007, Applicant submitted a notarized response to the SOR, and elected to have his case decided on the record in lieu of a hearing. Department Counsel submitted the Government's written case on September 21, 2007.² Applicant received a complete file of relevant material (FORM) on September 25, 2007, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's case. Applicant did not submit any additional information. The case was assigned to me on December 13, 2007.

FINDINGS OF FACT

Applicant admitted to the allegations in subparagraphs 1.a through 1.e, 2.b, and 2.c of the SOR under Guideline H and Guideline E.³ The admissions are incorporated as findings of fact. Applicant denied allegations 1.f, 2.a, and 2.d of the SOR in part because he disagreed with some facts. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 27-year-old employee of a defense contractor.⁴ After graduating from high school in 1997, he attended a technical career center until 1999. From 1999 until 2003, Applicant served in the military, receiving an honorable discharge. He has worked for his current employer since December 2003. Applicant is divorced with no children.⁵ He completed his security clearance application (SF 86) on June 23, 2005.⁶

¹This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

²The Government submitted seven items in support of its contentions.

³Item 2 (Applicant's Answer to SOR, dated September 7, 2007).

⁴Item 4 (Application for Security Clearance (SF 86), dated June 23, 2005).

⁵*Id.*

⁶*Id.*

While in high school (1997), Applicant started using marijuana, experimenting with the illegal drug in social settings. He acknowledged that he continued using marijuana until sometime in 2003.

In 1998, Applicant was employed at a body shop. He decided to play a practical joke on a fellow employee who was asleep during a break. Applicant poured laquer thinner under the sleeping co-worker and lit it on fire. The co-worker awoke suddenly but he was not injured. Applicant received a warning from his employer.⁷

In 1999-2000, while in the military and holding a sensitive compartmented information clearance (SCI), Applicant used the illegal drug ecstasy several times. He obtained the drug from a friend and used it alone in his family home. The drug was in a pill form. Applicant acknowledged the drug made him hyper and talkative. He used the drug again for a period of time in 2003-2004.⁸

In April 2003, Applicant used percocet, a prescription drug, not prescribed to him. He received the pill from a friend. Applicant used it after drinking alcohol to enhance the effect of the alcohol. When Applicant completed his November 13, 2003 security clearance application, he did not list his 2003 use of marijuana, ecstasy, cocaine and percocet in answer to Question 27. He was switching jobs and needed a security clearance. He did not want to lose his opportunity to get a security clearance. Applicant answered “no” to Question 28 concerning illegal drug use while having a security clearance because he knew that admitting the use would not allow him to switch jobs and retain a security clearance.

In 2004, Applicant used cocaine on two separate occasions. Also, he was involved in the transport of the cocaine in October 2004. The cocaine was in a small baggy that someone gave him to deliver to someone else. He denies that any money exchanged hands.⁹

In 2004, Applicant decided to train for health reasons at a gym on a regular basis. He went to the gym and claimed he did not have time anymore for drugs. He also met a new girlfriend who did not like drugs and he decided he would not use drugs in the future. He regrets using drugs and believes it was a stupid thing to do.

On the June 23, 2005 security clearance application, Applicant answered “yes” to Question 28 concerning use of illegal drugs while holding a sensitive position. However, he listed using ecstasy one time in 2004. He did not disclose the use of cocaine, marijuana or percocet. Applicant held a security clearance in the military from 2000 until 2003. Applicant was denied a security clearance in April 2005.

⁷Item 2 *supra* at note 3.

⁸Item 6 (Clearance Adjudication Records, dated August 2004 and 2005).

⁹Item 4 (Security Clearance Application, dated June 22, 2005).

Applicant has never been charged or arrested for using illegal drugs. He has not received any drug treatment or rehabilitation. He claims he has no intention of using drugs in the future.¹⁰ He regrets using the drugs but believed he could hide the fact so he could maintain a clearance.¹¹

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.”¹² In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information and determining trustworthiness within the executive branch.

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive. The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in ¶ 6.3 of the Directive, and AG ¶ 2(a).

“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 a security clearance.”¹³ An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.¹⁴ An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances 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 voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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.¹⁵

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.¹⁶

¹⁰Item 5 (Interrogatory, dated June 6, 2007).

¹¹*Id.*

¹² *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

¹³ Directive, ¶ E2.2.1.

¹⁴ Directive, Revised Adjudicative Guidelines (AG) ¶ 2 (a)(1)-(9).

¹⁵ *Id.*

¹⁶ Directive, ¶ E3.1.14.

Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.¹⁷ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”¹⁸ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.¹⁹

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guidelines H and E of the revised Adjudicative Guidelines (AG).

Guideline H (Drug Involvement) The Concern: *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 judgement and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations.*²⁰

In this matter, the government provided substantial evidence that Applicant used marijuana, ecstasy and cocaine for a period of more than seven years. Applicant admitted his most recent use in 2004. Applicant used illegal drugs on multiple occasions while holding a security clearance. Consequently, Drug Involvement Disqualifying Condition (DI DC) AG ¶ 25(a) (*any drug use*), DI DC AG ¶ 25(c) (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*), and DI DC AG ¶ 25(g) (*any illegal drug use after being granted a clearance*) apply.

With the government’s case initially established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation. I considered Drug Involvement Consideration Mitigating Condition (DIMC) AG ¶ 26(a) (*the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment*). However, Applicant used cocaine as recent as 2004. He used illegal drugs while serving in the military. Applicant held an SCI clearance during the time he used illegal drugs. His use was not an isolated incident. This mitigating condition does not apply.

Applicant provided insufficient evidence to support DIMC AG ¶ 26(b) (*a demonstrated intent not to abuse 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*). I find insufficient proof of a demonstrated intent. He has never sought counseling for drug use. He

¹⁷ Directive, ¶ E3.1.15.

¹⁸ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 2002).

¹⁹ Directive, ¶ E2.2.2.

²⁰ AG ¶ 24.

conveniently voiced his desire not to use drugs in the future after the start of the current investigation. The fact that he did not disclose all relevant information on his security clearance application in 2003 and 2005 leaves me with doubt as to any demonstrated intent. Applicant claims his last use of cocaine was in December 2004. Even if that is the case, given his long history of abuse, that is not a sufficient period of abstinence for mitigation.

Guideline E (Personal Conduct) The Concern: *Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.*

On November 13, 2003, and June 23, 2005, Applicant did not disclose all relevant information concerning his drug use in response to Question 28. On November 13, 2003, Applicant, in response to Question 27, noted some of the drugs he used while in a sensitive position, but not all. He denied such use while in a sensitive position in his November 13, 2003 security clearance application. He admitted that he was afraid that in switching jobs, if he disclosed the drug use, he would not get a security clearance. He admitted that he did not want the Government to know of his illegal drug use because he had an SCI clearance at one time and was aware of the drug policy. I do not find his answer that he forgot to list all the drugs as reasonable, given his other statement in the record. Under DC PC 16(a), (*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire*) the government established that Applicant omitted a material fact from answers referenced above in his 2003 and 2005 security clearance application. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence regarding an Applicant's intent or state of mind at the time the omission occurred.²¹ I find that Applicant deliberately falsified his answers on his 2003 and 2005 security clearance application.

I have considered the mitigating conditions under personal conduct, and none of them apply. Applicant's history of illegal drug use and his intentional falsification of answers concerning illegal drug use do not persuade me that he just forgot to provide complete information on his security clearance application.

Whole Person

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthy determination process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. 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.

²¹See ISCR Case NO. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004).

I have considered all the evidence and the “whole person” in evaluating Applicant’s security clearance determination. Applicant’s long term and still quite recent lapse in judgment with drugs leaves doubt as to his reliability. I have considered his desire to put this behind him, but I conclude it is premature to find in favor of Applicant. Despite having an SCI clearance, Applicant continued to use illegal drugs. He wanted to hide the issue from the Government so that he could maintain a security clearance when switching jobs. He was honorably discharged from the military, but he has not met the burden to overcome the security concerns. Applicant has demonstrated poor judgment, dishonesty, and lack of candor. This lack of reliability has spanned a period of many years. It is not clearly consistent with the interests of national security to grant a security clearance for Applicant. Clearance is denied.

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. Guideline H:	AGAINST APPLICANT
Subparagraph 1.a-1.f:	Against Applicant
Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.-2.d	Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant’s request for a security clearance. Clearance is denied.

Noreen A. Lynch
Administrative Judge