



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



In the matter of:)	
)	
XXXXXX, XXXXXXXX XXXXXXXX)	ISCR Case No. 07-18050
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Francisco J. Mendez, Jr., Esquire, Department Counsel
For Applicant: *Pro se*

September 19, 2008

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 9 April 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H.¹ Applicant answered the SOR 27 May 2008, and requested a hearing. DOHA assigned the case to me 18 July 2008, and I convened a hearing 25 August 2008. DOHA received the transcript (Tr.) 4 September 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. He is a 27-year-old aero-mechanical engineer employed by a defense contractor since February 2005. He has not previously held a clearance.

Applicant used marijuana for about 10 years between 1997 and May 2007. Most of his marijuana use occurred during his college years (1999-2004), but his marijuana use continued after his graduation in May 2005. It continued after he had been hired by his current employer in February 2005, despite the fact that company policy prohibited all illegal drug use, and Applicant had been required to pass a drug screening as a condition of employment. During his college years, Applicant contributed to the purchase of marijuana at least once. He also experimented with hallucinogenic mushrooms in the late 1990s, tried ketimine in 1999, cocaine in 2000, and LSD and ecstasy in 2001. He was also arrested for marijuana possession in 1999, pled guilty, and was sentenced to perform community service. However, he continued to use marijuana after this arrest.

Applicant disclosed this drug history on a clearance application he executed in August 2007 (G.E. 1). He disclosed essentially the same information during a October 2007 subject interview (G.E. 2).

Applicant stopped using marijuana in May 2007, because he knew that the government would not allow him to have a clearance if he was using marijuana. Yet, he knew that company policy also prohibited drug use, and he knew when he was hired that he would eventually be required to obtain a clearance. He also cites his girlfriend (soon-to-be-fiancé) of 2 ½ years as another reason for him to remain drug free. She does not use marijuana, but is aware that Applicant has.

After graduation from college in May 2005, Applicant used marijuana in party settings when it was offered to him. Since May 2007, he has been offered marijuana by acquaintances at two different parties, but asserts—without corroboration—that he has declined.

Applicant is a good employee (A.E. A). He has executed a formal drug statement of intent as contemplated by the Directive (A.E. B).

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 guideline is Guideline H (Drug Involvement).

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.²

Analysis

The government established a case for disqualification under Guideline H, by demonstrating Applicant's use and purchase of marijuana between 1999 and May 2007.³ However, Applicant has only partially mitigated the security concerns. Regarding his experimental use of ecstasy, LSD, cocaine, ketimine, and hallucinogenic mushrooms, he demonstrated that the use was under circumstances unlikely to recur,⁴ and further demonstrated intent to not abuse these drugs in the future.⁵ While Applicant's use of these drugs is fairly characterized as "recent," this term has less meaning under the new adjudicative criteria, where the corresponding language "the behavior happened so long ago. . ." [¶ 26.(a)], is used in the disjunctive with language that clearly applies to Applicant. In addition, his experimental drug abuse was infrequent.

²See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

³¶25.(a) any drug abuse ; (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

⁴¶ 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 [Emphasis supplied];

⁵¶ 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.

However, Applicant failed to mitigate the security concerns over his marijuana use. This use began before college, continued while he was in college, and continued long past the point where he was aware of the potential consequences for his employment and clearance. He continued marijuana use after 1999 despite his marijuana possession. He continued despite company policy and his knowledge that a clearance in his position would eventually be required. Unlike his experimental use of drugs, Applicant use of marijuana was recent, not infrequent overall, and not under unusual circumstances. He has not dissociated himself from drug using associates and contacts, changed or avoided environments where drugs are used, or had an appropriate period of abstinence. Without some corroboration of either his abstention or his refusal of offered marijuana, I do not consider his year-plus abstinence from marijuana use an appropriate period of abstinence. I have considered his signed statement of intent to refrain from marijuana use. However, aside from this statement, Applicant offers little in the way of changed circumstances that give credence to his now-stated intent to refrain from marijuana use in the future. Accordingly, I resolve Guideline H against Applicant.

Formal Findings

Paragraph 1. Guideline H: AGAINST APPLICANT

- Subparagraph a: Against Applicant
- Subparagraph b: Against Applicant
- Subparagraph c: For Applicant
- Subparagraph d: For Applicant
- Subparagraph e: For Applicant
- Subparagraph f: For Applicant
- Subparagraph g: For 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