When Your Background Investigator Threatens to “Waterboard” You

Sean Bigley / Jan 21, 2018

The thing about being a lawyer – particularly one in my line of work – is that just when you think you’ve seen it all, the previously unthinkable happens.

The latest “unthinkable” occurred recently while defending a U.S. Secret Service employee accused of intentionally failing to report minor drug involvement at age 15 or 16 on her SF-86 form.

The employee is 25 years old now (24 when she completed the SF-86), so those readers familiar with the SF-86 might immediately recognize the obvious: the drug use was outside the seven-year scope of the relevant question.

If only it were that easy.

Because the employee was applying to move from an administrative role into a law enforcement role, she was subjected to broader, agency-specific suitability questioning; namely, whether she had *ever* used illegal drugs or otherwise been involved with them.

Some might argue that those questions are straightforward, but they may not be to a young person whose only prior exposure to such questioning was all framed within the context of seven (7) years. Does “ever” mean “ever in the last seven years”; “ever since the age of 18” – the age that other sections on the SF-86 instruct the applicant not to report beyond unless to provide a minimum two years’ investigative coverage; or, truly, “ever.” And if it is “truly ever,” what possible relevancy could a puff on a marijuana cigarette at, say, age 12, have to some job application decades later?

In this case, the examiner failed to adequately frame the question, raced through the interview, and the employee answered “no” under a reasonable misapprehension of the question’s scope. When later re-asked the same question again, she sought clarity and volunteered the adverse information. No big deal, right?

But again, if only it were that easy. Instead of merely noting the misunderstanding and moving on, the employee’s polygraph examiner allegedly decided on a different course of action: repeatedly accuse the employee of being a drug addict and a liar – all while alone with her, armed, in a small room; dictate a false statement for her to write and sign under protestation; and then, get in her face and threaten to “waterboard” her if she doesn’t come clean with whatever else she’s hiding.

In fairness, it was the employee who first raised the possibility of “waterboarding” as a nervous deflection against the examiner’s aggression (“I swear I’m telling the truth – you can even waterboard me”). But the examiner took that and ran with it, going so far as to tell the employee, while leaning forward without the slightest sign of humor, that he had a “bucket of water and a table” in the back room, and that “they could do this right now.” Talk about professionalism.

My office is currently appealing the security clearance revocation in this case, and the Secret Service is refusing to release the recording of the polygraph that would corroborate the employee’s accusations. I believe that any agency interested in transparency should do so under these unusual circumstances, and we’ll continue to press the issue as appropriate. In the meantime, however, know this: security clearance investigators and polygraphers have no authority to physically harm or intimidate anyone, much less “waterboard” them (words I never thought I’d be writing). If something similar happens to you, immediately contact an attorney or your agency’s Office of Inspector General.

This article is intended as general information only and should not be construed as legal advice. Consult an attorney regarding your specific situation.