

KEYWORD: Drugs

DIGEST: Applicant's use of marijuana on two occasions, once in 2001, and again in 2004, after having completed a security clearance application has been mitigated. He has not used marijuana for the last three years and has demonstrated the he will not use marijuana in the future. Clearance is granted.

CASENO: 06-12932.h1

DATE: 02/20/2007

DATE: February 20, 2007

In Re:	)	
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SSN: -----	)	ISCR Case No. 06-12932
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's use of marijuana on two occasions, once in 2001, and again in 2004, after having completed a security clearance application has been mitigated. He has not used marijuana for the

last three years and has demonstrated that he will not use it in the future. Clearance is granted.

## STATEMENT OF THE CASE

On September 25, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

The Applicant responded to the SOR in writing on October 19, 2006, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on November 30, 2006. A notice of hearing was issued on December 14, 2006, scheduling the hearing for January 18, 2007. At the hearing the Government presented three exhibits. The Applicant presented four exhibits and called three witnesses. He also testified on his own behalf. He submitted one Post-Hearing Exhibit consisting of five enclosures and nineteen pages. The official transcript (Tr.) was received on January 26, 2007.

## FINDINGS OF FACT

The Applicant is 25 years old and has a Bachelor's Degree in Electrical Engineering. He is currently working on his Master's Degree. He is employed by a defense contractor as an Engineer and Member of the Technical Staff. He is seeking to obtain a security clearance in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline H - Drug Involvement). The Government alleges that the Applicant is ineligible for clearance because he has abused illegal substances.

The Applicant admitted the allegation set forth in the SOR under this guideline. He used marijuana on two occasions, once in 2001, and again in 2004, after he had completed a security clearance application for the department of defense. On both occasions he knew that he was wrong and that he should not have done it. He realizes the seriousness of his poor choices and is truly remorseful. He also understands the importance of his position with the defense contractor and the responsibilities that come with it.

Since 2000, the Applicant has been working toward his degree in Engineering. Since June 2003, he has been an intern working for a defense contractor, as an intern, while still a college student, and was offered a full time job when he graduated. In January 2004, he started working full time for a defense contractor. He applied for a fellowship position whereby he could earn his Masters Degree at USC, and his employer would place him on part-time work status and pay for his schooling. In the fall of 2004, he was accepted into the program and he has been attending USC for the last three semesters. He is scheduled to graduate in December 2007

He contends that he has now matured and grown as an individual. He no longer associates with drug using individuals and never intends to use marijuana again. He pays his student loans and is currently assisting his family in purchasing a house by making one-fourth of the mortgage and escrow payment each month. He is very involved in his church and serves on the Leadership Board of the College Group. He does not discuss with his family or anyone else what he does for a living.

The Applicant's mother, father and College Ministry Director testified on the Applicant's behalf. They define the Applicant has a diligent student and overall hard worker individual who has shown responsibility, honesty, integrity and trustworthiness. They were all totally side-blinded when they learned that he had used marijuana. (Tr. pp. 29 - 46).

Letters of recommendation submitted on behalf of the Applicant from his Department Director, his Pastor, and his best friend further attest to his good character, intelligence, honesty, hardworking and trustworthiness. It is their opinion that with his formal education and professional growth in his career he will make numerous contributions to the security of the country. (Applicant's Exhibits A and B).

Applicant's Post Hearing Exhibit indicates that he has also recently researched the DoD policies as well as his own companies policies on substance abuse and their no tolerance policies. (Applicant's Post-Hearing Exhibit, enclosure 2, 3 and 4).

His most recent completed graduate course summary represents a 3.4 GPA. (Applicant's Post-Hearing Exhibit, enclosure 5).

## POLICIES

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

### Guideline H (Drug Involvement)

24. 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 judgment and because it raises questions about a person's ability or willingness to comply with laws, rules and regulations.

#### 25. Conditions that could raise a security concern:

(a) any drug abuse;

(c). illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution; or possession of drug paraphernalia.

#### 26. Condition that could mitigate security concerns:

(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.

(b). A demonstration intent not to abuse any drugs in the future, such as:

(1) disassociation from drug-using associates and contacts;

(4) a signed statement of intent with automatic revocation of clearance for any violation.

\_\_\_\_\_ In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in

Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

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## CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in illegal drug use that demonstrates poor judgment or unreliability.

It is the Government’s responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant’s conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government’s case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant her a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has engaged in illegal drugs use (Guideline H). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with her security clearance eligibility.

Considering all of the evidence, the Applicant has introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guideline H of the SOR.

The Applicant has not used marijuana since 2004, a three year period, and he indicates that he will never use it in the future. He understands that he made a poor choice to use marijuana in the first place. His company not only hired him as a full time engineer but awarded him with a fellowship, that would pay for him to obtain his Master’s degree while still employed with the company. He is a very fortunate individual who expressed embarrassment and remorse by his stupidity in using marijuana. At the hearing, his demeanor was professional and his testimony is credible. His references and witnesses are believable. Given the fact that the Applicant’s drug use occurred a number of years ago, and there is no indication of recent problems, sufficient rehabilitation and mitigation has been shown.

Under Guideline H, Drug Involvement, Disqualifying Conditions 25 (a) *any drug abuse*, and (c) *illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution* applies. However mitigating conditions 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*; (b) *a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates or contacts*; and (4) *a signed statement of intent with automatic revocation of clearance for any violation* are also applicable. Accordingly Guideline H is found for the Applicant.

In addition to the disqualifying and mitigating conditions in this case, I have also considered the “whole person” concept. Under the particular facts of this case, the Applicant appears to have matured from a college student and intern into a responsible full time working engineer, with a fellowship award from his employer who believes he has the potential to make a valuable contribution to our society. I have considered the nature, extent and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, his age and maturity at the time of the conduct, the voluntariness of participation, the presence or absence of rehabilitation and other pertinent behavioral changes, the motivation of the conduct, the potential for pressure, coercion, exploitation, or duress; and the likelihood of continuation or recurrence. I have considered each of these factors individually and collectively in reaching my overall conclusion.

On balance, it is concluded that the Applicant has overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the SOR.

### **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subpara. 1.a.: For the Applicant.

### **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson  
Administrative Judge