

KEYWORD: Drugs

DIGEST: Applicant, a 23 year old engineer with a major defense contractor, successfully mitigated security concerns for marijuana use during college by demonstrating an intent not to use again and separating himself from his college associates with whom he used. An allegation of use while holding a security clearance was rebutted by a factual showing his last use occurred four months prior to his employment. Clearance is granted.

CASENO: 06-22753.h1

DATE: 05/22/2007

DATE: May 22, 2007

In Re:	)	
	)	
-----	)	
SSN: -----	)	ISCR Case No. 06-22753
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
CHARLES D. ABLARD**

**APPEARANCES**

**FOR GOVERNMENT**

Eric H. Borgstrom, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

\_\_\_\_\_Applicant, a 23 year old engineer with a major defense contractor, successfully mitigated

security concerns for marijuana use during college by demonstrating an intent not to use again and separating himself from his college associates with whom he used. An allegation of use while holding a security clearance was rebutted by a factual showing his last use occurred four months prior to his employment. Clearance is granted.

### **STATEMENT OF CASE**

\_\_\_\_\_ On November 29, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to 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 Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On December 11, 2006, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to me on February 12, 2007. A notice of hearing was issued on March 2, 2007, and a hearing was held on March 22, 2007. Four government exhibits and three applicant exhibits were admitted into evidence. Applicant, and one witness testified on his behalf. The transcript was received on March 30, 2007.

### **FINDINGS OF FACT**

\_\_\_\_\_ Applicant admitted the SOR allegations relating to use of marijuana but denied that he had used marijuana while holding an interim security clearance. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 23-year-old employee of a defense contractor employed as an electrical design engineer since July 17, 2006. He had worked in a cooperative program at the same company while a student through a his university sponsored program for two periods of three months each in 2005 and 2006. The second and last employment while a student concluded in February 2006 (Exh. A). He applied for a security clearance on a SF 86 on February 23, 2006 on which he acknowledged use of marijuana. The last use was in April 2006 just before his graduation (Tr. 15). He elaborated on the frequency of use in his statement to an investigator saying he had used marijuana approximately forty times over a five year period while in college. During the time he worked with the cooperative program for his company he did not use marijuana (Tr. 15 and Exh. 2). Applicant has a Bachelor's degree in electrical engineering and applied communications granted in May 2006.

\_\_\_\_\_ Applicant owns his own home which he has been restoring since January 2007. He is single with an annual salary is \$57,000. He is regarded as a dedicated and highly regarded employee by his supervisor (Exh. B).

\_\_\_\_\_ Applicant's use of marijuana was with his college friends whom he no longer sees and he no longer associates with people who use drugs. His company does random drug testing. He does not intend to use illegal drugs in the future. His statement on that intent to the investigator was somewhat equivocal but he clarified it at the hearing to my satisfaction and the investigator and department counsel who both agreed with the clarification as no longer equivocal (Tr. 57-58).

\_\_\_\_\_ The government conceded at the hearing that Applicant did not use drugs while holding a security clearance and that a finding on the allegation should be in his favor (Tr. 57).

### POLICIES

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, 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.” *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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. Directive, ¶ E2.2.1. Security clearances are granted only when “it is clearly consistent with the national interest to do so.” Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

\_\_\_\_\_ Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. Applicant then bears the burden of demonstrating it is clearly consistent with the national interest to grant or continue a security clearance. “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” Directive, ¶ E2.2.2. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

### CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

The government has cited drug involvement under Guideline H as a security concern in the proposed denial of a security clearance for the Applicant. Drug involvement is always a security concern because it raises questions about a person's willingness or ability to comply with laws, rules and regulations (AG ¶24). Any drug abuse is a condition that may be disqualifying (AG ¶ 25 a). Mitigating Conditions that might be applicable are that there is a demonstrated intent not to abuse any drugs in the future, by disassociation from drug-using associates and contacts, and changing the

environment where drugs were used (AG ¶ 26 b 1 and 2). The mitigating factors are applicable here since he has demonstrated an intent not to use and no longer associates with the same people with whom he used while in college.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude Applicant's youth, record of conduct, and candor justifies a finding that it is clearly consistent with the national interest to grant a security clearance to him. He is an intelligent young man with a promising career whose college life and indiscretions are behind him as he embarks on a career in his chosen field.

**FORMAL FINDINGS**

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline H:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	For Applicant

**DECISION**

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

Charles D. Ablard  
Administrative Judge