

DATE: April 16, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-09547

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant answered "No" to questions 23 and 24 on his Questionnaire for National Security Positions (QNSP). Relying on the past advice of his high school counselor, he did not disclose two 1995 vehicular theft charges when answering question 23. He had forgotten about his one time use of marijuana when answering question 24. He disclosed this one time drug usage to the Defense Security Service (DSS) Agent voluntarily and without being confronted as to the usage. The DSS Agent felt the Applicant was telling the truth regarding his two responses, and people who know the Applicant aver that he is a truthful person. Clearance is granted.

STATEMENT OF THE CASE

On October 18, 2002, 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 the 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 a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on November 13, 2002.

The case was received by the undersigned on January 14, 2003. A notice of hearing was issued on February 26, 2003, and the case was heard on March 18, 2003. The Government submitted documentary evidence, and one called witness to testify. Testimony was taken from the Applicant, who also called three witnesses to testify on his behalf. The transcript was received on April 3, 2003. The issues raised here are whether the Applicant's alleged personal conduct militates against the granting of a security clearance.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The

Applicant is 24 years of age, has a high school education, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant.

Guideline E - Personal Conduct

1.a. and 1.b. In answering question 23 on his March 1999 QNSP, the Applicant answered "no," that he had not been charged with any offense in the preceding seven years (Government Exhibit (GX) 1 at page 7). The Applicant testified credibly, as evidenced by his forthright demeanor and consistency, that he had been advised in the past by his high school counselor that as he was a minor when he committed the two theft charges, he was not required to disclose their existence (TR at page 29 lines 1~8, and at page 37 lines 7~22). The DSS Agent who subsequently interviewed the Applicant felt that he was telling the truth in this regard (TR at page 24 lines 7~20).

In answering question 24 on the same March 1999 QNSP, the Applicant answered "no," that he had not used any controlled substance since the age of 16 (GX 1 at page 8). The Applicant again testified credibly that he had forgotten about his one time use of marijuana three years prior, when he was 18 years of age (TR at page 26 line 18 to page 27 line 2, at page 30 lines 8~20, at page 37 line 23 to page 38 line 18 and GX 3 at page 1). When he was subsequently interviewed by the DSS Agent, and she asked him about the two vehicular charges, it jogged his memory about the one time marijuana usage (*id*). He, *sua sponte* and without being confronted, disclosed his this one time usage to the Agent (*ibid*). The DSS Agent corroborated his testimony (TR at page 21 lines 5~14, at page 22 lines 3~13, and at page 23 lines 22~25).

Mitigation

Those who work with the Applicant think highly of him and would recommend him for a position of trust (AppX D at pages 3~7). Three other individuals also testified, in no uncertain terms, that the Applicant was a truthful person (TR at page 43 lines 14~19, at page 48 line 12 to page 49 line 9, and at page 53 line 17 to page 54 line 21).

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. The conditions should be followed in every case according to the pertinent criterion, however, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security clearance case presents its own unique facts and circumstances, it should not be assumed that these conditions exhaust the realm of human experience, or apply equally in every case. Conditions most pertinent to evaluation of this case are:

Personal Conduct

Conditions that could raise a security concern:

None

As set forth in the Directive, "[each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent and seriousness of the conduct and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.

e. Absence or presence of rehabilitation.

f. Probability that circumstances or conduct will continue or recur in the future."

The Administrative Judge, however, can only draw those inferences or conclusions that have a 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.

The Government must make out its case under Guideline E (personal conduct); which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

Personal conduct is conduct involving questionable judgement, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places.

CONCLUSIONS

When the Applicant answered questions 23 and 24 on his March 1999 QNSP, he answered them based on his memory and to the best of his ability. He had forgotten about his one time drug usage, and he relied upon the advice of his high school counselor as to the criminal charges he suffered when he was a minor. The DSS Agent, who interviewed the Applicant, felt he was telling the truth; and as such, was not attempting to deceive the Government. Those who testified on his behalf also averred that he was a truthful person. I also believe that his testimony was credible; and as such, Guideline E is therefore found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his alleged personal conduct. The Applicant has thus met the mitigating conditions of Guideline E, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline E.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

a. For the Applicant.

b. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of 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.

Richard A. Cefola

Administrative Judge