

DATE: November 23, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-09829

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

In 2000, Applicant acknowledged in an SF 86 his use of marijuana on more than 100 occasions through March 1999, including use while possessing a security clearance. He also stated, "at the present time my use of this drug is very rare." In 2001, Applicant admitted to a DSS investigator he used marijuana on at least 300 occasions over a 13 year period until October 1999. Applicant also acknowledged experimental use of other illegal drugs and said he had no intention of using any illegal drugs in the future, "except it is possible that I could smoke marijuana." Not until he received the SOR in July 2003 did he state an unequivocal intention not to use drugs. The record leaves doubt as to whether Applicant's drug use has ended. Clearance is denied.

STATEMENT OF THE CASE

On July 10, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline H (Drug Involvement). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant him access to classified information and recommends that his case be submitted to an Administrative Judge.

On July 22, 2003, Applicant responded to the SOR and requested a decision on the record in lieu of a hearing. The Applicant received the File of Relevant Material (FORM), containing six documents, on January 5, 2004. On January 25, 2004, he responded to the FORM. This case was assigned to me on February 5, 2004.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, including Applicant's admissions to all the allegations,⁽³⁾ I make the following findings of fact:

Applicant is a 43-year-old research associate who is employed by a defense contractor. He is seeking a security clearance.

Between 1979 and October 1999, Applicant used marijuana on at least 300 occasions. (SOR ¶ 1.a, e).

Applicant was granted a security clearance in 1985.

Between 1986 and October 1992, Applicant used cocaine on at least 30 occasions. (SOR ¶ 1.b, e).

Between 1988 and October 1992, Applicant used mushrooms on three occasions, LSD on one occasion, crank on five occasions, and ecstasy on at least 15 occasions. (SOR ¶ 1.c, e).

In one occasion in 1990, Applicant misused a prescription medication. (SOR ¶ 1.d, e).

On March 27, 2000, Applicant submitted a security clearance application (SF 86). In response to both question 27⁽⁴⁾ and question 28,⁽⁵⁾ Applicant answered, "yes." He disclosed his use of marijuana on an estimated 100 occasions between April 1, 1986 and January 1, 1998 and on three occasions between January 2, 1998 and March 18, 1999. Applicant further stated: "At the present time, my use of this drug is very rare." (SOR ¶ 1.a, e, f).

On February 21, 2001, Applicant was interviewed by an investigator for the Defense Security Service (DSS). Applicant provided a sworn statement in which he acknowledged his use of marijuana, cocaine, mushrooms, LSD, crank, ecstasy, and his misuse of a prescription medication. Applicant further stated: "I have no intention of using any illegal drugs in the future, except it is possible that I could smoke marijuana, though it would be a very rare occurrence" (sic). (SOR ¶ 1.a-f).

POLICIES

Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted. Directive E3.1.14. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration 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 decision. This assessment should include the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 pertinent 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. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guideline is applicable to this case.

Guideline H: Drug Involvement

The concern under Guideline H is that improper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information. Conditions that could raise a security concern and may be disqualifying under Guideline H include E2.A8.1.2.1, any drug abuse (Disqualifying Condition 1). Conditions that could mitigate security concerns include E2.A8.1.3.1, the drug

involvement was not recent.

CONCLUSIONS

Applicant's admitted drug use raises Disqualifying Condition 1. Although his experience with most of the drugs appears to have been a limited, experimental one, Applicant's marijuana use occurred on at least 300 occasions over a 13 year period. Applicant stated in his security clearance application that his last use was in March 1999. He told a DSS investigator that his last use was in October 1999. Applicant's response to the SOR attests that his last use of marijuana occurred during the latter period.

To his credit, Applicant admitted his drug use and that is the basis for this case. He argues his drug involvement is not recent because it ended in 1999. However, Applicant referred to his marijuana use "at the present time" in his security clearance application on March 27, 2000. Nearly a year later, he told a DSS investigator that he had no intention of using any illegal drugs in the future, "except it is possible that I could smoke marijuana," adding that it would be a very rare occurrence. Based on the record, that continued to be Applicant's intention until July 2003. Only after learning that he was not being awarded a security clearance, Applicant responded to the SOR by insisting his "position on this matter has changed." At this point, he could "say with assurance that I do not intend nor will I use marijuana in the future."

Applicant's response to the FORM does not further clarify how his "position" changed. In fact, that response appears more devoted to defending his drug use than attesting to his drug reform. Applicant argues that his drug use while he held a security clearance should have no additional bearing because he never received "specific advice that such activity would automatically cause the revocation of the clearance." It appears Applicant may not have been aware of the consequences of his drug use until he was confronted by the SOR. Based on the record, Applicant was ambivalent on further marijuana as late as 2001 and he did not unequivocally reject that position until last year. Careful consideration of the record does not establish the applicability of any of the mitigating conditions under Guideline H because it leaves doubt as to whether, in fact, Applicant has completely rejected the use of marijuana. In accordance with E2.2.2 of the Directive, such doubt must be resolved in favor of national security. Therefore, I find against Applicant.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline H: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

DECISION

In light of the evidence of record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Signed

Roger E. Willmeth

Administrative Judge

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.
3. Applicant only took exception to his breathalyzer being alleged as .09, maintaining it was .04 (SOR ¶ 2.a, 4.b).
4. "Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.) or prescription drugs?"
5. Have you ever illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a position directly and immediately affecting public safety?"