

DATE: January 15, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-10502

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant used marijuana for many years. Some of this use occurred while he held a security clearance. In addition, he lied about his drug use on a Personnel Security Questionnaire (PSQ). Clearance is denied.

STATEMENT OF THE CASE

On June 9, 2003, 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 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on June 25, 2003, and elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's written case (FORM) on or about September 9, 2003. Applicant filed a response to the FORM on or about October 3, 2003. The case was assigned to me on October 27, 2003.

FINDINGS OF FACT

Applicant is a 32 year old employee of a defense contractor.

Applicant used marijuana "no more than two or three times a year during [his] college years (1987-1992)."⁽¹⁾

In March 1994, applicant completed a PSQ in connection with his employment with a defense contractor. In response to a question concerning prior illegal drug use, applicant denied that he had ever used an illegal drug.⁽²⁾ Applicant intentionally provided the false information because he was ashamed of his drug use, and was nervous about returning

the PSQ to his boss, who was also the owner of the company, because he was unsure how the boss would react.

Later in 1994, applicant was interviewed by a Special Agent of the Defense Security Service (DSS). During that interview, applicant admitted that he had used marijuana. The Government alleges that during this interview, applicant also told the agent that he had no intention of using marijuana in the future. The Government failed to prove this allegation.

Subsequent to the 1994 interview, and while he was holding a DoD security clearance, applicant used marijuana three or four times, the last time in May 2001. Applicant explains this post-interview marijuana use by stating that he came away from the DSS interview with the impression that limited use of marijuana by clearance holders was "normal," (3) "not a big issue," (4) "no big deal," (5) and that "harder more financially dependent drugs were the problem." (6) In essence, he claims that the DSS agent led him to believe that he could continue using marijuana on an occasional basis.

In 2001, applicant was reinvestigated by DoD. At the time he admitted that he had continued to use marijuana after being granted a security clearance. In his response to the FORM, applicant stated that he "was surprised at the response" to this admission. He further stated, in pertinent part:

I was not aware how severe the consequences could be for even one time use while in possession of a clearance. I have been well versed several times on the importance and proper procedures for safeguarding classified information, but drug use has never been mentioned. I now know that even the occasional use of marijuana is not acceptable for someone with a security clearance. I have never bought or sold drugs, nor have I ever been addicted, so there is no problem for me to say that I have 'No Intention' of using drugs in the future and holding to it.

In Exhibit 5 he stated: "I now realize that my marijuana use, limited as it had been, could jeopardize my ability to obtain/retain a security clearance, and concurrently, my job. As such it is my intent to never use marijuana or any illegal drug from this day (December 5, 2001) forward."

POLICIES

Enclosure 2 of the Directive sets forth Guidelines (divided into Disqualifying Factors and Mitigating Factors) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Disqualifying Factors and Mitigating Factors are applicable:

Drug Involvement

Disqualifying Factors

E2.A8.1.2.1: Any drug abuse.

Mitigating Factors

E2.A81.3.1: The drug involvement was not recent.

Personal Conduct

Disqualifying Conditions

E2.A5.1.2.2: The deliberate omission of relevant and material facts from any personnel security questionnaire.

Mitigating Conditions

None.

CONCLUSIONS

With respect to Guideline H, the evidence establishes that applicant used marijuana an average of once a year from the late 1980s to May 2001. Some of this drug use occurred after applicant had been granted a security clearance. Applicant's illegal use of marijuana, particularly after he had obtained a security clearance, reflects adversely on his judgment, reliability and trustworthiness, and suggests he cannot be relied upon to safeguard classified information.

Applicant claims, in essence, that he was misled by the DSS agent during his 1994 interview. Although this claim is not in the form of an explicit statement, he clearly implies that the DSS agent gave him the "green light" to continue using marijuana on an occasional basis. This claim is not credible. Based on my experience, in 1994 no DSS agent would state or imply that any illegal drug use was acceptable for a clearance holder. Applicant's attempt to avoid taking responsibility for his own illegal drug use raises additional questions about his judgment, reliability and trustworthiness.

I have considered applicant's statements that he does not intend to use marijuana in the future. Based on his falsification of the PSQ, his use of marijuana after he was put on clear notice that illegal marijuana use was a concern to DoD, and his attempt to shift the responsibility for his illegal marijuana use while holding a security clearance to the DSS agent, I do not find his statements in this regard to be credible and worthy of belief.⁽⁷⁾ Given this fact, it is not now clearly consistent with the national interest to grant him access to classified information.

With respect to Guideline E, applicant's falsification of material facts on the PSQ concerning his drug use is extremely troubling. The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. When such an individual intentionally falsifies material facts on a security clearance application, it is extremely difficult to conclude that he or she nevertheless possesses the good judgment, reliability and trustworthiness required of clearance holders. In this case, I have considered the facts that the falsification was not recent, and that it appears to be an isolated incident.⁽⁸⁾ These facts, however, are insufficient to mitigate applicant's dishonesty in light of the fact he offered no independent evidence (e.g., letters or affidavits from family members, friends, co-workers, supervisors) indicating that he is now a reliable and trustworthy individual.

FORMAL FINDINGS

PARAGRAPH 1: AGAINST THE APPLICANT Subparagraphs a and b found against applicant.

PARAGRAPH 2: AGAINST THE APPLICANT

Subparagraph a found against applicant.

Subparagraph b found for applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for applicant.

Joseph Testan

Administrative Judge

1. Exhibit 5.

2. The SOR incorrectly identifies the PSQ as a Questionnaire for National Security Positions, and incorrectly identifies the "drug question" as Question 32a. I find that in this case, neither mistake prejudiced applicant.

3. Response to FORM.

4. Exhibit 3.

5. Exhibit 5.

6. Exhibit 3.

7. Since his statements are not credible and worthy of belief, he has not demonstrated an intent not to abuse drugs in the future. Accordingly, he does not qualify for Mitigating Condition E2.A8.1.3.3.
8. The absence of credible evidence (applicant's uncorroborated statements do not constitute credible evidence) that applicant subsequently provided the correct information about his marijuana use to DoD *voluntarily* precludes application of Mitigating Condition E2.A5.1.3.2.