

DATE: October 19, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-00697

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's drug abuse started in 1982 with marijuana and cocaine use; he continued to use marijuana until August 1997 when a positive drug test led to his termination of employment. Nevertheless, even after he applied for a security clearance and made a commitment to himself and the government to remain drug-free, he again used drugs with a co-worker in July 2000. Applicant's marijuana use is too recent and extensive to demonstrate his commitment to avoid any drug use in the future despite his renewed statement of intent. Further, Applicant minimized his drug use on his initial security form and has engaged in questionable personal conduct in violation of policies and regulations in his previous employment. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on April 26, 2001. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. ⁽¹⁾ The SOR alleges specific concerns over drug abuse (Guideline H) and Personal Conduct (Guideline E). Applicant responded to these SOR allegations in an Answer notarized on May 21, 2001, where he admitted paragraphs 1.a., 1.b, 1.e., 1.f., and 1.g., 2.a., 2.d.; but he denied 1.c., 1.d., 2.b., 2. c., and 2.e. While he provided explanations, he did not request a hearing.

The case was assigned to Department Counsel who on July 2, 2001, prepared a File of Relevant Material (FORM) for the Applicant's review and advised Applicant that he had 30 days to submit objections and/or information before the FORM was submitted to an administrative judge and that he had the right to be represented by counsel. A Personnel Security Specialist (PSS) sent the FORM to Applicant on July 19, 2001, and again notified the Applicant that he had 30 days from receipt of the letter to submit objections and/or information before the FORM was submitted to an administrative judge. Applicant received the FORM on August 1, 2001, but did not respond by the August 31, 2001 deadline. On September 6, 2001, the case was assigned to me.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant is a 37 year old employee of a defense contractor in State #1 who began work there in February 1998. He applied for a security clearance in July 1999 by executing a Security Clearance Application (Standard Form 86) (SF 86). From November 1997 to February 1998 he was unemployed; from June 1991 to November 1997 he was employed by a State #1 county sheriff's department. He was married in May 1992 and has one child born from that marriage in November 1995; he has another child for whom he pays child support, but he was never married to the mother. (Items 4, 5, 6, 7 & 8)

Drug Abuse and Personal Conduct

In his SF 86 Applicant did not list his entire history of admitted use of illegal drugs; neither did he reveal the entire extent of his employment problems and questionable personal conduct in his initial interview with the Defense Security Service (DSS) in July 2000. He started using marijuana in high school in 1982 and also tried cocaine once in 1982 because of peer pressure. Then he smoked marijuana socially with friends once or twice a week from 1990 to August 1997; he usually bought marijuana every three months; he has not bought any marijuana since August 1997. He has not sold marijuana. After a positive drug test in August 1997, he initially claimed to DSS that he stopped using marijuana as it cost him a job; and he was responsible for his young son. He still associated with one of his friends who used drugs, but he claimed he did not see him as often as in the past. While he stated in July 2000 that he did not intend to use marijuana or any other illegal drug in the future, after that initial DSS interview, he again used marijuana in July 2000 with a co-worker at the facility where he now works because he thought his "security clearance process was finished." In his second DSS interview in August 2000 he again asserted that he did not intend to use any illegal drugs in the future. (Items 4, 7 & 8)

Earlier Applicant was terminated by a sheriff's department where he was a civilian employee and supervised 25 after an August 1997 complaint alleged he brought drugs into the facility and sold them to inmates. Applicant asserted in a July 2000 DSS interview that the allegation of bringing drugs into the facility was totally false; but, in fact, he later admitted in his August 2000 DSS interview that he had once in 1991 smuggled in half a marijuana cigarette in a cigarette package to give to an inmate. In investigating the matter the sheriff asked Applicant to take a drug test; Applicant then admitted to his employer that he had used marijuana just three days earlier so that the drug test would be positive; it was. In October 1997 he was suspended with pay pending a hearing. In November 1997 he received a letter of termination which cited the positive urinalysis and specified his taking contraband items of value from inmates; he was found not guilty of providing drugs to inmates. He had been advised in June 1997 by the new sheriff that drug use by employees would lead to termination. He was found to have violated policies and regulations regarding employee conduct, work performance and security, and potentially to have jeopardized the safety and security of the facilities, the inmates, and the staff. Also, Applicant had allowed inmates to take sugar back to their jail cells on numerous occasions even though the prison policy prohibited prisoners from having sugar in the cells. He also accepted cigarette UPC codes from inmates to trade into the company for merchandise. (Items 4, 7, 9)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

Guideline H - Drug Involvement

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.

Drugs are defined as mood and behavior altering:

[First] Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens) and

[Second] Inhalants and other similar substances.

Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

Conditions that could raise a security concern and may be disqualifying include:

- (1) Any drug abuse (see above definition);
- (2) Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution;

Conditions that could mitigate security concerns include:

- (1) The drug involvement was not recent;

Guideline E - Personal Conduct

Conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying also include:

(2) The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(5) A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency;

Conditions that could mitigate security concerns include:

None

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance.

Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Drug Abuse

Applicant's drug abuse raised security concerns as he used marijuana from 1982 to July 2000. He also used cocaine once in 1982. He purchased small amounts of marijuana from 1990 to 1997, but never sold drugs. However, he did provide a

partial marijuana cigarette to a jail inmate while he worked in a position of trust there in 1991. His marijuana use included the period when he worked for a sheriff's department and led to his termination there in November 1997 after an August 1997 complaint that alleged he brought drugs into the facility focused attention on him, and he tested positive on a drug screen. Even after he submitted his SF 86 in July 1999 and after his initial DSS interview in July 2000 where he made a commitment to stop using drugs, he used marijuana again as he thought the security process was complete. He never sought drug treatment.

While Applicant yet again stated his decision not to use marijuana or other illegal drugs in his second DSS interview in August 2000, the recency of his marijuana use and the recency of the renewed commitment to drug abstinence⁽²⁾ do not meet the mitigation⁽³⁾ guidelines. First, his drug involvement was not an isolated or aberrational event. In assessing the strength of his most recent decision to avoid drugs, I have looked at him as a whole person. To his credit he has stopped having relationship with most of the individuals he knew when he used drugs and has made another commitment to stop using drugs. However, his abstinence from marijuana is only fifteen months long which is too short when one takes into account the length and extent of his use. He even continued to use after he had been advised that use of marijuana would lead to termination from his job in 1997 and again after he thought the security process was complete in July 2000. Further, since he has failed to live up to a commitment to remain drug free, it is too soon to conclude that he has persuasively demonstrated his power to avoid any drug use for the future. While he values his job, his choice to use marijuana while on a job in a sheriff's department and his decision to use again in a job requiring a security clearance shows deplorable judgement. Thus, I conclude he does not meet conditions that could mitigate these security concerns over his marijuana use and purchase.

On the other hand, his use of cocaine was minimal in 1982. Thus, I conclude that this drug use can be mitigated as that drug involvement was not recent. After considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on Paragraph 1 and subparagraph 1.a. through 1.f., but for Applicant on subparagraph 1.g.

Personal Conduct

In completing his SF 86 Applicant had a duty to disclose all adverse information in response to the questions asked: he failed to do so with respect to question 24a as he minimized his drug use. Thus conditions that could raise a security concern and may be disqualifying include (2) his deliberate omission, concealment, or falsification of relevant and material facts from his personnel security questionnaire. Applicant had a duty to fully disclose all relevant and material information and failed to do so. Further he showed poor judgment when as an employee of a sheriff's department, he violated policy for giving prisoners sugar to take to their cells and by accepting something of value from the inmates when he took UPC codes from inmates' cigarette packs which he traded for merchandise; thus he falls within disqualifying condition (5): A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency. His denial of 2.e. is contradicted by his earlier admissions on the benefits he gained from the UPC codes in his earlier DSS statement (Item 7).

Applicant denied allegations 2.b. and 2.c., that he falsified material facts during his second interview in August 2000 regarding a denial of having provided drugs to any prisoners in the jail and over shifting the month of the exact time he used drugs with a co-worker. The only document in the record concerning this interview (Item 8) shows that Applicant did admit that he took an illegal drug once and gave it to an inmate in 1991. Applicant also disclosed that his use of marijuana with a co-worker took place in July 2000. Thus I accept Applicant's denials of falsification on these two points during his second interview. However, Applicant has failed to demonstrated he meets mitigating conditions⁽⁴⁾ concerning the other falsification allegations.

While he was later cooperative in explaining the details of his past drug use to the DSS agents, his conduct is not sufficient to fall within MC 3 as there is no evidence that Applicant made prompt, good-faith efforts to correct the SF 86 falsification before being confronted with the facts. Further, he never argued that his failure to provide complete responses fell within MC 4 (Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided.)

After considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraphs 2.a., 2.d. and 2.e. but for him on subparagraphs 2.b. and 2.c. under SOR Paragraph 2.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

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

Subparagraph 1.g. For Applicant

Paragraph 2. Guideline E AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e.: Against 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 the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. The Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 mandated restrictions on the granting or renewal of security clearances which was implemented within the Department of Defense by a June 7, 2001, Memorandum, and within DOHA by Operating Instruction (OI) 64, issued on July 10, 2001. Provision (2) disqualifies persons who currently are unlawful users of, or addicted to, controlled substances. The policies apply to all pending cases in which a final decision had not been issued as of the June 7, 2001, date of the memorandum. In this instance I have determined that the Smith Amendment (10 U.S.C. Section 986) does not apply as the Applicant's drug use has

ceased for fifteen months.

3. Conditions that could mitigate security concerns include:

1. The drug involvement was not recent;
2. The drug involvement was an isolated or aberrational event;
3. A demonstrated intent not to abuse any drugs in the future;
4. Satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable diagnosis by a credentialed medical professional.

4. Conditions that could mitigate security concerns include:

1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability;
2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;
3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts;
4. Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided;
5. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress;
6. A refusal to cooperate was based on advice from legal counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information;
7. Association with persons involved in criminal activities has ceased.