

DATE: August 15, 2001

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-02001

**DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR GOVERNMENT**

William S. Fields, Esquire, Department Counsel

**FOR APPLICANT**

Robert B. Rigney, Esquire

**SYNOPSIS**

Applicant's conduct raises security concerns over his drug abuse which began in 1996 with marijuana, cocaine, LSD, and Valium during high school and during a period of family crisis as his parents' divorce was followed by his mother's death. While those difficulties do not excuse his drug use, those circumstances put it in context. He continued to use and purchase marijuana until July 2000 when he made a believable commitment to cease using any drugs. He now has a year of abstinence that is supported not simply by his own testimony, but also by his sister who has also noted his increased maturity, and by his manager who has noted his continual improvement at work which led to a recent promotion. Thus, I conclude he has been able to demonstrate his commitment to avoid any drug use for over a year and has had a subsequent clean drug test. Clearance is granted.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on April 25, 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. <sup>(1)</sup> The SOR alleges specific concerns over drug abuse (Guideline H). Through counsel Applicant responded to these SOR allegations in an Answer notarized on May 29, 2001, where he admitted paragraphs 1.a. though 1.e. and provided explanations; he requested a hearing.

The case was assigned to Department Counsel; on June 15, 2001, he attested it was ready to proceed. On June 15, 2001, the case was assigned to me. Subsequently, a mutually convenient date for hearing was agreed to and a Notice of Hearing was issued on June 20, 2001, which set the matter for July 9, 2001, at a location near where Applicant works and lives. At the hearing the Government introduced two exhibits which were admitted into evidence (Exhibits 1-2). The applicant's counsel called Applicant and two other individuals to testify and offered four exhibits which were all admitted into evidence. (Exhibits A-D) The transcript (TR) was received on July 17, 2001.

## **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 25 year old employee of a defense contractor in State #1 who was recently promoted. He began work there in May 1998; he applied for a security clearance in February 2000 by completing a Security Clearance Application (Standard Form 86) (SF 86). He has a child born in January 1994. (Exhibit 1; TR 41-44) He has a tenth grade education and did not graduate from high school. (TR 43)

### **Drug Abuse**

In his SF 86 he admitted use of illegal drugs: marijuana 30 times from July 1994 to January 1999; Valium three times from March 1996 to July 1996; cocaine seven times from March 1996 to July 1996, and LSD one time in March 1996. In August 2000 the Defense Security Service (DSS) interviewed him about his past drug use; he confirmed his marijuana use started in high school in 1994 and continued until January 1999, but added that subsequently he has continued to use marijuana from January 1999 to August 2000 once or twice per month. He reported to DSS he had continued to use marijuana for recreational purposes when he got together with friends as most of his friends use marijuana. He also admitted that he has bought marijuana for his own use, including a purchase in April 2000, but he never sold or distributed any illegal substance. (Exhibits 2, A, B, C; TR 47-52, 54-59) Applicant used marijuana again after he completed his SF 86 because he had been "hanging out with the wrong people. . . at the wrong time." (TR 56) In July 2000 he made a decision not to use marijuana again and has not done so. (TR 57-58)

His other drug use was confined to the 1996 period: he used cocaine in 1996, but has not subsequently used this drug. He purchased \$20 worth of cocaine once, but he has never sold cocaine. He used LSD in 1996; he spent \$20 on mushrooms and the "acid was provided" to him. He used Valium (a prescription drug not prescribed for him) also in 1996 and spent \$10 on the pills once. He has had no drug related arrests and has not received any medical treatment for his use of drugs. (Exhibits 2, A; TR 52-53)

In August 2000 Applicant declared his intention to stop using marijuana: he was concerned about being a good parent and role model for his child and he needed a security clearance for his job. His job was more important to him than the use of marijuana. In May 2001 he again attested to being "drug-free. . .for quite some time." He had a negative urinalysis screening in May 2001. In July 2001 he attested that he last used marijuana in July 2000, "About a year ago." (Exhibits 2, A, B, C; TR 47-52, 54-59)

### **Evaluations and References**

During his three years at the defense contractor, Applicant has consistently earned "above average" performance evaluations, yearly salary increases, increased responsibilities and, recently, a promotion. He often works ten hours a day for six or seven days a week. (Exhibit A; TR 45-46)

His supervisor for three years praised Applicant's "willingness to learn" and commended his pride in his work. He noted that Applicant "pays attention to detail, follows directions, and is punctual. He is an asset to the company and the people he works with." (Exhibit D)

The corporate manager who has known Applicant for three years and sees him on a daily basis at various job sites has a Secret security clearance and has had one for thirty years. He assesses Applicant as "a very good worker" who has been put in a minor leadership role which he has taken on "with great gusto. He is thorough and always anticipates and is a very good communicator on his needs." He reported that Applicant has consistently improved over the three year period and is an "excellent employee." The company works on a tight schedule and normally works five or six days a week from eight to twelve hours a day. Applicant's work does not now require a security clearance, but he would need one in the near future. (TR 32-40)

His sister, who is 29 and a criminal division supervisor for the federal court, testified on his behalf. Applicant has lived with her and her husband for over four years since their mother died. She attributes some of his problems to their

parents divorce and her mother's early death. She described Applicant as conscientious about going to work on time and as a "steadfast worker" who was recently promoted. She assesses him as having "absolute integrity and character." Recently, his friends have changed, and he has matured. (TR 22-26, 27-30)

## 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;
- (3) A demonstrated intent not to abuse any drugs in the future;

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**

The Government has raised security concerns over Applicant's drug abuse as he used marijuana from 1994 to July 2000 and also used cocaine, LSD and Valium in 1996; he purchased small amounts of these drugs in 1996 and marijuana from 1994 to 2000. He used marijuana even after he completed his SF 86.

However, to his credit in July 2000 Applicant made a decision not to use marijuana again and has not done so. As he matured, he realized other priorities were more important: he wanted to be a good parent and role model for his child and he needed a security clearance for his job as his job was more important to him than the use of marijuana. In May 2001 he attested to being "drug-free. . .for quite some time." He had a negative urinalysis screening in May 2001 is an indicator that he has kept his commitment to remain drug free.

In assessing the strength of his new commitment, I have looked at him as a whole person. He began his drug use during a period of family crisis as his parents' divorce was followed by his mother's death. While those difficulties do not excuse his drug use, those circumstances put it in context. He has stopped having any relationship with the individuals he knew when he used drugs and has made a credible commitment to stop using drugs supported by a year of abstinence from marijuana and five years from the time he used cocaine, LSD and Valium. That abstinence<sup>(2)</sup> is supported not simply by his own testimony, but also by his sister's observations who noted his increased maturity which she closely observes as he lives with her. Further, his manager observed his continual improvement a work which led to a recent promotion. Given his heavy work schedule and his commitment to his job, I conclude he has been able to demonstrate his commitment to avoid any drug use for over a year. Thus, I conclude he meets conditions that could mitigate these security concerns: (1) The drug involvement was not recent; and (3) A demonstrated intent not to abuse any drugs in the future. After considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraphs 1.a. through 1.e. as he no longer uses illegal drugs and has demonstrated his intent to do avoid them in the future.

### **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: FOR APPLICANT

Subparagraph 1.a. For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

### **DECISION**

In light of all 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.

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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 one year, and Applicant has demonstrated his commitment to abstinence from any drugs.