

DATE: August 17, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-07857

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Mark Curry, Esquire, Department Counsel

Perry Russell-Hunter, Esquire, Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's drug abuse started in 1991 with marijuana and continued until February 2001, including repeated use even after he applied for a security clearance and made a commitment to himself and the government to remain drug-free. In 1994-98 he experimented with a variety of other drugs and purchased and sold marijuana and LSD on a limited scale in college. Since his drug use other than marijuana as well as his drug purchases and sales were confined to his college days (1994-98) and not subsequently repeated, that involvement can be mitigated. But 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. 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 19, 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). Applicant responded to these SOR allegations in an Answer notarized on June 21, 2001, where he admitted paragraphs 1.a. through 1.f. and provided explanations; he requested a hearing.

The case was assigned to Department Counsel; on July 13, 2001, he attested it was ready to proceed. On July 13, 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 July 18, 2001. The matter was set for August 2, 2001, at a location near where Applicant works and lives. At the hearing the Government presented three exhibits which were admitted into evidence (Exhibits 1-3). The Applicant testified and proffered five exhibits which were all admitted into evidence. (Exhibits A-E) The transcript (TR) was received on August 10, 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 began work there in January 1999. He applied for a security clearance in November 1999 by executing ⁽²⁾ a Security Clearance Application (Standard Form 86) (SF 86). He graduated from a university in December 1998 with a BS and was on the Dean's list in Spring 1997. (Exhibits 1, A; TR 38-40)

Drug Abuse

In his SF 86 Applicant admitted use of illegal drugs: marijuana/hashish, hundreds of times from 1991 to September 1998; "Riddlein" (Ritalin) three times from 1997-98; "Exstasy" (Ecstasy) twice in 1997, Dexedrine, an amphetamine, six times from 1996-98; Opium/Poppy Seeds, twice from 1995-96, Hallucinogenic mushrooms, seven times from 1994-98; and LSD five times from 1994-96. Also he purchased marijuana/hashish several times, sold marijuana/hashish three times and sold LSD at least once; he stopped his drug sales in 1997. (In college he lived with three or more drug dealers.) By the time he was finishing college he admitted he was dependent on marijuana and failed a drug test for a job in spring 1998. After that he stopped purchasing marijuana, but continued to use marijuana. In his SF 86 dated November 1999 he stated that he intended to stop using drugs as he was aware how drugs "poison" a person's mind and distort reality to make people behave abnormally. (Answer; Exhibits 1, 2, 3; TR 20-24, 29-30, 33-37)

When in July 2000 the Defense Security Service (DSS) interviewed him about his past drug use, he confirmed his marijuana use started in high school in 1991-92, increased in college where he used it initially once a day and then increased it by his senior year to two to three times a day. He purchased it on a regular basis. After he failed a drug test for an internship in his senior year, he realized he was "making a mistake by throwing away opportunities in order to get high." He continued to use marijuana two or three times a month until September 1998 when he ceased regular use. From 1998 to 2000 he used marijuana four times: once in October 1999, twice in December 1999 and once in June 2000. He was drinking at the time of that marijuana use which contributed to his decision to use again. In July 2000 he again stated his intention to stop his use of marijuana. (Exhibit 3; TR 27-28)

Despite this stated intent to cease drug use, Applicant again used marijuana three times: in August 2000, in December 2000, and in February 2001, the night before his grandfather's funeral. Despite his acknowledged drug dependence, he has never sought drug treatment. (TR 26-27, 32-33, 42-43)

His current girlfriend and his family do not find drug use acceptable. He has an exemplary work performance and is dedicated to his job and his client. (TR 24, 42) His intent now is to refrain from any drug use, and he no longer associates with the people with whom he earlier used illegal drugs. (TR 43)

Evaluations and Award

During his three years at the defense contractor, Applicant has consistently earned good ratings. From February 1999 to July 1999 he generally met expectations and grew some. From July 1999 to June 2000 he frequently exceeded expectations and grew as expected. From June 2000 to July 2001 he frequently exceeded expectations and grew as expected. (TR 16-18; Exhibits C, D, E) He was nominated for a quarterly peer recognition award for which he received a cash award in Spring 2001 for his innovative ideas, leadership, quality of work, and technical expertise. Overall he was described as "one of the strongest performers." (TR 14-15; Exhibit B)

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;

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 raised security concerns over Applicant's drug abuse as he used marijuana from 1991 to February 2001. He also used many other drugs in the 1994-98 period and purchased and sold small amounts of these drugs until 1998. He used marijuana again even after he submitted his SF 86 in November 1999 where he made a commitment to stop using drugs. And he used marijuana again after he stated to DSS in July 2000 that he would stop using marijuana. He never sought drug treatment even after admitting he had a drug dependence.

While Applicant has yet again made a decision not to use marijuana or other illegal drugs, the recency of his marijuana use and the recency of the renewed commitment to drug abstinence⁽³⁾ do not meet the mitigation⁽⁴⁾ 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 any relationship with the individuals he knew when he used drugs and has made another commitment to stop using drugs. However, his abstinence from marijuana is only six months long which is too short when one takes into account the length and extent of his use and his own admitted dependence on marijuana. Further, since he has twice failed to live up to this

commitment, 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 and has done well in it, his choice to use marijuana repeatedly while on a job requiring a security clearance shows poor judgement. Thus, I conclude he does not meet conditions that could mitigate these security concerns over his marijuana use.

On the other hand his use of the other drugs, though extensive in the number of drugs used, was minimal in the number of times he used them. That drug use, though more than experimentation, was confined to his college days from 1994-98 and not subsequently repeated in the past four years. Further his drug purchases and sales were minimal as well and ceased in 1997-98. Thus, I conclude that other ⁽⁵⁾ 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, but for Applicant on subparagraphs 1.b. through 1.f.(1) through (5).

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.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.(1): For Applicant

Subparagraph 1.f.(2): For Applicant

Subparagraph 1.f.(3): For Applicant

Subparagraph 1.f.(4): For Applicant

Subparagraph 1.f.(5): 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 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. He initially completed his SF 86 when he was an intern in January 1999, but it was returned as he did not need a security clearance for that job. When it was resubmitted in November 1999, Applicant was simply asked to re-sign Exhibit 1 and submit the same document. He did not update it to include his use of marijuana in October 1999.

However, he had no intent to defraud the Government by not updating it as he was not given the privacy portion of the form (Exhibit 2) to review and update. (TR 30-31, 40-42, 44-45) (No allegation of falsification was included in the SOR.)

3. 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 six months.

4. 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.
5. Ritalin three times from 1997-98; Ecstasy twice in 1997, Dexedrine six times from 1996-98; Opium/Poppy Seeds, twice from 1995-96, Hallucinogenic mushrooms, seven times from 1994-98; and LSD five times from 1994-96.