

DATE: June 21, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-08208

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's marijuana use stopped one year before close of the record. Use happened between ages of 17 and 22. Applicant has matured and evinces credible intent not to use marijuana in the future. Adverse inference is overcome. Clearance is granted.

STATEMENT OF THE CASE

On October 10, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on November 6, 2001, and requested that the case be decided without a hearing. The Government submitted its File of Relevant Material (FORM) to the Applicant on January 9, 2002. The Applicant was given 30 days from receipt of the FORM to submit any documents in rebuttal, extenuation or mitigation. The Applicant received the FORM on January 25, 2002, and submitted a response on February 15, 2002. The Department Counsel did not object to the admissibility of the additional material. The case was received by the undersigned on February 26, 2002.

FINDINGS OF FACT

The Applicant is 23, single and has a bachelor's degree. He is employed by a defense contractor as a Buyer, and he seeks to obtain or retain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the

Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and criterion in the SOR. They are based on the Applicant's Answer to the SOR and the exhibits.

Paragraph 1 (Guideline H - Drug abuse). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he abuses illegal drugs.

The Applicant first began using marijuana in approximately 1995, when he was 16. From September 1997 to June 1998 the Applicant used marijuana approximately twice a week. From July 1998 to December 1999 the Applicant used marijuana about monthly. (Government Exhibit 5 at 1-2.) He used marijuana two or three times in the year 2000. (Government Exhibit 6 at 1-2.) He stopped using marijuana in January 2001, a year before the record closed. He expresses a credible intent not to use marijuana or any other illegal drug in the future. (Applicant's "Response to File of Relevant Material Submitted by Department Counsel.")

The Applicant admitted using psychedelic mushrooms once in May 1998. He has not used them since that time and evinces a credible intent not to use them in the future.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Guideline H (Drug involvement)

Condition that could raise a security concern:

(1) any drug abuse;

Conditions that could mitigate security concerns:

(1) the drug involvement was not recent;

(3) a demonstrated intent not to abuse any drugs in the future;

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct

h. The potential for pressure, coercion, exploitation or duress

I. The likelihood of continuation or recurrence."

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of drug abuse that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting or continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has used marijuana from 1996 to January 2001.

The Applicant, on the other hand, has successfully mitigated the Government's case. The un rebutted evidence shows that the Applicant stopped using marijuana a year before the record closed. He stated that in January 2001, as he entered his last semester of college, and signed his last sworn statement, "I realized it was time for a change in my life and it was time to stop using drugs." (Applicant's "Response to File of Relevant Material Submitted by Department Counsel.") In addition, the evidence shows that his marijuana use had been steadily decreasing before stopping entirely in January 2001. He has been continually open and honest with the Government concerning his marijuana use. Accordingly, his statements concerning his future intentions are accorded due weight. The Applicant was a very young man throughout the time of his drug use. His heaviest use came when he was 18 and 19, which is when he used mushrooms for the only time. His written answers and statements show a young man who is truthful, maturing and understands his responsibilities as a clearance holder. Under the particular circumstances of this case, the likelihood of recurrence is virtually nil.

Turning to subparagraph 1.d., the Applicant is not a current user of illegal drugs. Accordingly, I find that the provisions of 10 U.S.C. 986 do not apply to this case.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: For the Applicant.

Subparagraphs 1.a. through 1.d.: For the 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.

Wilford H. Ross

Administrative Judge