

DATE: April 18, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-08343

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

WILLIAM S. FIELDS, Department Counsel

FOR APPLICANT

ROBERT R. SPARKS, Jr., Esquire

SYNOPSIS

The Applicant used marijuana between 1976 and 1998. She intends not to use marijuana in the future. Clearance is granted.

STATEMENT OF THE CASE

On December 10, 2001, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On December 28, 2001, the Applicant answered the SOR and requested a hearing. The case was assigned to me on January 30, 2002. A Notice of Hearing was issued on February 8, 2002, and a continuance was granted for good cause an amended Notice of Hearing was issued on March 4, 2002, scheduling the hearing which was held on March 13, 2002. The Government's case consisted of two exhibits (Gov Ex). The Applicant relied on her own testimony. The record was held open to allow the admission of documentation from the Applicant. On March 19, 2002, a single, multi page submission was received. Department counsel having no objection to its admission, the submission was admitted as App. Ex. A. A transcript (tr.) of the hearing was received on March 21, 2002.

FINDINGS OF FACT

The SOR alleges improper or illegal drug involvement (Guideline H). The Applicant admits her prior usage and denies she might use marijuana in the future.

The Applicant is 37 years old, has worked for a defense contractor since October 1998, and is seeking a security clearance. Her work performance is outstanding. (App Ex A) She completes all her tasks with admirable professionalism, proficiency, courtesy, and patience. She is being groomed to take on more responsibility. In the three years she has been on the job her salary has increased more than \$11,000.00. She has also received a \$5,000.00 bonus

plus stock options for her work performance.

The Applicant first used marijuana in the 8th grade. She regularly used it throughout high school, until her senior year. Between 1976 and 1998, she used marijuana more than 100 times with the majority of her usage occurring during her high school years--1976 to 1981. Since high school her usage has been sporadic, the Applicant frequently going years without using. (Gov Ex 2). She has used it twice during the past 10 years.

On December 31, 1998--New Year's Eve -- the Applicant was at home alone, without any plans and decided to clean her room. In cleaning she came across an ashtray containing a pipe and some marijuana. She lit the marijuana and took two puffs before deciding her conduct was inappropriate. She stopped smoking the marijuana and threw it out along with the pipe. She describes her conduct as a "stupid mistake." (tr. 38) This usage occurred a month and a half after she had started her current job. Her next most recent marijuana usage had occurred one year earlier, on the previous New Year's Eve.

Since December 31, 1998, her last usage, she has been at two parties where she suspected marijuana was present. At a football party she observed individuals leave the party and go into a back room where she suspected marijuana was being smoked. On suspecting marijuana use, she felt uncomfortable and left the party. At the second party, she did not see anyone smoking marijuana, but smelled what she believed to be marijuana, at which time she left the party. She left the parties recognizing the presence of marijuana put her at risk.

The Applicant believes it is imperative to be honest with everything, which is why she disclosed her marijuana use on her Security Clearance Application, Standard Form 86. (tr. 35) The Applicant does not intend to use marijuana in the future (tr. 26) even she executed a signed, sworn statement in May 1999 (Gov Ex 2) in which she stated:

My intention is not to use again in the future but if asked may participate, however, I do not associate with anyone who partakes in the use of drugs and at this time I would turn down any offer.

If now asked to participate, the Applicant would refuse. (tr. 26) The Applicant has no intention of ever using marijuana again because she has too much to lose. She has a job, a career, a home, and wants a different life, and has reached a point of maturity. (tr. 30) She no longer associates with the same people. She is not longer interested in using marijuana as evidenced by her statement:

I've made a lot of changes in my life in last three years, and I'm very happy with the way things are. I love my home. I love my family. I love my job. I love the people I work with, and I don't want to do anything to risk that. (tr. 30-31)

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Drug Involvement (Guideline H) The Concern: 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.

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

a. Any drug abuse.

Conditions that could mitigate security concerns include:

a. The drug involvement was not recent.

c. A demonstrated intent not to abuse any drugs in the future.

BURDEN OF PROOF

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the Applicant who must remove that doubt and establish her security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue her security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof with regard to its security concerns over Applicant's drug involvement (Guideline H). The Applicant has a twenty-two-year history of illegal drug use starting in 1976 when the Applicant was thirteen years old and ending on December 31, 1998, when the Applicant was 33 years old. While in high school, the Applicant used marijuana frequently. Since then she has used it sporadically. Her two most recent usages occurred on New Year's Eve 1997 and 1998. On December 31, 1998, she took two puffs of marijuana but throwing it out when she realized her conduct was inappropriate. Disqualifying Condition a. ⁽²⁾ applies.

She has not used illegal drugs in more than three years and no longer associates with those who used marijuana. She understands illegal drug usage is incompatible with the career path she has chosen to take and does not intend to use illegal drugs in the future. She realizes the negative impact drug usage can have on one's life and realizes usage is inappropriate. The Applicant owns her own home, has a close family, has a good job and does not want to jeopardize it. Since her last usage she attended two parties where she believed marijuana was present. Once she determined marijuana was present, she acted appropriately by leaving.

Mitigating Condition (MC) a. ⁽³⁾ applies, because the most recent usage occurred more than three years ago and her next most recent usage occurred more than four years ago. Her intent not to use illegal drugs in the future, coupled with her candor about her drug use, and her demonstrated

honesty, is sufficient for me to find her expressed intent fulfills MC c. ⁽⁴⁾ Accordingly, I find for the Applicant as to Guideline H (Drug Involvement). SOR subparagraphs 1.a. and 1.b. are resolved in favor of the Applicant.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the

circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline H (Illegal Drug) FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: 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.

Claude R. Heiny
Administrative Judge

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Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 as amended.
 2. a. Any drug abuse.
 3. a. The drug involvement was not recent.
 4. c. A demonstrated intent not to abuse any drugs in the future.
5. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 as amended.
 6. a. Any drug abuse.
 7. a. The drug involvement was not recent.
 8. c. A demonstrated intent not to abuse any drugs in the future.