

DATE: October 9, 2001

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-08420

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN G. METZ, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

Erin C. Hogan, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**STATEMENT OF THE CASE**

On 5 July 2001, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR)(Item 1) to Applicant, stating that DOHA could not make the preliminary affirmative finding<sup>(1)</sup> that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 13 July 2001, Applicant answered the SOR (Item 4) and requested an administrative decision on the record. On 7 September 2001, Applicant responded to the Government's File of Relevant Material (FORM)--issued 13 August 2001; the record in this case closed 18 September 2001, the day Department Counsel indicated no objection to the response. The case was originally assigned to a different Administrative Judge, but was reassigned to me on 20 September 2001 because of caseload considerations; I received the case the same day, to determine whether clearance should be granted, continued, denied or revoked.

**FINDINGS OF FACT**

Applicant admitted the allegations of the SOR (Item 4). Accordingly, I incorporate Applicant's admissions as findings of fact.

Applicant--a 27-year old employee of a defense contractor--seeks access to classified information.

From approximately December 1994 to at least 31 December 2000, Applicant remained in the presence of friends/boyfriend who were using marijuana, even though she knew using marijuana was illegal, and had been granted an interim clearance on 27 April 2000. From approximately December 1994 to 1997, Applicant remained in the presence of friends/former boyfriend who were using speed (amphetamine), acid (LSD), and hallucinogenic mushrooms, even though she knew using these drugs was illegal. Applicant intends to continue being present when illegal drugs are being used because she sees no national security issue in her being present when illegal drugs are used.

Applicant first described her association with drug users in a sworn statement given to the Defense Security Service on 29 June 2000 (Item 6):

I have never used any illegal substances and do not have intent to do so in the future.

My first exposure with persons who were involved with use of drugs was when I shared an apartment with a coworker, [named]. I don't recall her last name. We resided at [named apartment, city, state] from December 1994 to June 1995. I did not list this residence on my security questionnaire because of the short duration I resided there. While there, several of our friends and my boyfriend at the time, used drugs. Because of noise from the parties we hosted there, complaints were made to and by the management. My boyfriend, who stayed there most of the time, was using speed, marijuana, acid and mushrooms. There was also a lot of alcohol use at the parties. I never tried any of these drugs; I was scared that if I did, I would like it, so I never did. My boyfriend broke up with me in 1997. I continue to have contact with about five people I knew from this period approximately three to four times a year. Some of them continue to use marijuana.

I have known my current boyfriend/cohabitant, [named], since elementary school. I have been with him since December 1997. I know he used drugs while in college but do not know the details. Every three or four months [he] uses marijuana when we attend small parties. He does not purchase the drug, but uses it when friends offer it. To my knowledge, [he] has never dealt, sold, or trafficked in drugs. [He] uses the marijuana in my presence, but he doesn't use it to the extent that it bothers me. I currently see [his] friends on a social basis. To my knowledge, none of them are involved in the use of drugs. It is possible that other people, including friends, could think I have used drugs, although I never have.

. . . There is nothing in regards to my friends use of drugs or my use of alcohol that could be used to blackmail or pressure me into acting against the best interest if the U.S. Government and I would report any attempt to do so to the proper authorities.

On 6 June 2001, Applicant responded to interrogatories designed to elicit her boyfriend's subsequent drug use and her attitude toward drug use in her presence (Item 7):

Since June 29, 2000, my boyfriend has used marijuana extremely minimally. There are only 3 times I can think of, the first was July 4, 2000, at a picnic. The second was the last weekend in August 2000, at a small party. Thirdly, on New Years Eve, December 31, 2000, at a holiday party. None of the above situations occurred in my house or on its property. Since New Years Eve, 1/1/01, I have not know (sic) him to use marijuana or any drugs for that matter.

There is no national security concern involved in my being in the presence of illegal activity. I do not touch or use marijuana. I do not pass any drug devices. I am not a "lookout." I will not be coerced into trying any drug. I can not be blackmailed. View my judgement however you wish, but I am not and will not be cause for national security concerns. (Emphasis in original).

Our [company] facility has no safeguarding capability. I have no assess (sic) to any level of classified information. (computer, paperwork, equipment) My boyfriend has no bearing on my job performance. My quality and the effort I put into my work has not and will not change or be changed by any outside force. I am not a security concern.

In a notarized statement on 7 September 2001 (Correspondence File), Applicant retreated--for the first time--from her stated intention to continue to be in the presence of individuals using drugs:

Please consider the following letter with Ms. Hogan's packet of information.

I would like to make this point that I was young and foolish being around people who know (sic) did drugs and especially my old boyfriend whom I no longer have contact with. We started dating before I was even twenty. Even young and foolish, I did not succumb to peer pressures to try any drug.

Now, I am twenty-seven. My life has moved on. My current boyfriend, [named], as I stated in the "Dept. of Defense Directive 5220.6, question #2" that he, has been marijuana (drug) free since January 1, 2001, and has remained so. We plan to marry next August 2002.

I can not honestly say that I will never see these friends/associates that partake in smoking marijuana. I will not deny them my friendship and counsel if they seek it. I can tell you that due to my fiancé being drug free we see less and less of these individuals.

There is no reason for national concern over my being granted a security clearance for the reason of judgement. My position would be to a back-up FSO. In a nutshell the job is to mail paperwork back and forth between clearance applicants and the DSS. I have no access to any level of classified information. *I make no judgmental decisions.* My job is to send out forms, make sure they are filled out, and mail them to the DSS. I also send out visit letter faxes or help with filing.

That is the whole extent of my government work. If I am granted this clearance it would not change my job's responsibilities, which only takes up approx. 15% of my work week. I hope you can see through all of this that I am a good person. Yes, I know right from wrong. It is not my position to judgement (sic) others. The only right I have is to judge myself and live my life so that I can be proud of it. I care more about how I see myself than how I appear when placed upon the clearance applicant scales. I have not lied when it could have been an easier route to go and that I am proud of.

Thank you for your time I certify the above is correct and true. (Emphasis in original).

### **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. 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, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

### **PERSONAL CONDUCT (GUIDELINE E)**

E2A5.1.1. **The Concern:** Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. . .

E2. A5.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A5.1.2.6. Association with persons involved in criminal activity.

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

### **Burden of Proof**

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where 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 he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the 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."

## CONCLUSIONS

The Government's evidence demonstrates that from approximately December 1994 to 31 December 2000, Applicant has been present in a variety of social settings where assorted roommates, friends, or boyfriends have engaged in what appears to be recreational abuse of marijuana--and for a period of time ending in 1997--speed, acid, and hallucinogenic mushrooms. The evidence suggests that Applicant intends to continue to allow others to use at least marijuana in her presence.<sup>(2)</sup> Although the Government has provided no evidence that the conduct of these individuals was criminal under the laws of the state where Applicant resided at the time,<sup>(3)</sup> these drugs are illegal and thus criminal within the meaning of Guideline E. That said, however, I do not find the Government has established a nexus between Applicant's conduct and the conclusion that she is unfit for access to classified information. In many cases, the Government is entitled to a presumption of nexus between the conduct proven and an adverse clearance conclusion. Nevertheless, here I find little reason to presume that nexus. Applicant's acquaintances do not appear to be involved in any ongoing criminal activity that would put Applicant at risk of arrest or otherwise subject her to duress or coercion. The concerns articulated by the Government in this case seem speculative. There is nothing in Applicant's acquiescence in her acquaintances' conduct to suggest that she is unwilling or unable to comply with the requirements for handling classified information. Thus, the risk she would deliberately or inadvertently compromise classified information is minimal.

In reaching this conclusion, I discount Applicant's assertions that she has no actual contact with classified information. I assume that if she has been certified as having a need for a clearance at any level that she will have access to classified information. And, as indicated above, my decision also assumes that Applicant will not remove herself from future situations where acquaintances or boyfriends engage in the recreational abuse of illegal drugs, should that happen. The record evidence indicates that Applicant has never used illegal drugs herself, has no intent to start, and has not been involved--other than her mere presence--in the recreational drug abuse of her acquaintances. I find Guideline E. for Applicant.

## FORMAL FINDINGS

Paragraph 1. Guideline E: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: 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 Applicant.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996 and Change 4 dated 20 April 1999 (Directive).
2. Although Applicant's response to the FORM indicates a partial retreat from her earlier position regarding the recreational drug use of others, I conclude this change of attitude largely due to the late realization of peril to her clearance eligibility. Further, the lessened occasion to be in the presence of other drug users seems more an accident of circumstances than a reflection of any objection to being in the presence of drug users.
3. Recognizing that many states have decriminalized simple possession and use of user amounts of marijuana and other drugs.