

DATE: October 7, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 01-12082

**DECISION OF ADMINISTRATIVE JUDGE**

**CAROL G. RICCIARDELLO**

**APPEARANCES**

**FOR GOVERNMENT**

Rita C. O'Brien, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 48 years old and has worked for a federal contractor since 1989. Applicant used marijuana from 1977 to 2002, and was arrested three times for drug offenses. During that time Applicant intended to stop using marijuana, but had relapses. Applicant used marijuana after he started the security clearance application process. Applicant accumulated significant delinquent debt during this period and has taken little action to resolve it. Applicant has not been in criminal trouble since 1998. Although Applicant has not used marijuana since 2002, based on his long history of drug use and relapses, it is too soon to conclude he is successfully rehabilitated. Applicant has mitigated the criminal conduct concerns, but failed to mitigate the drug and financial concerns. Clearance is denied.

**STATEMENT OF CASE**

On July 15, 2004, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR, which are in essence the administrative complaint, alleged security concerns under Guideline J, criminal conduct, Guideline H, drug involvement, and Guideline F, financial considerations.

In a sworn statement, dated August 9, 2004, Applicant responded to the SOR allegations, and requested a hearing. In his SOR response, Applicant admitted some allegations and denied other allegations.

The case was assigned to me on August 10, 2005. A notice of hearing was issued on August 29, 2005, scheduling the hearing for September 15, 2005. The hearing was conducted as scheduled. Government Counsel submitted eighteen exhibits that were marked as Government Exhibits (GE) 1-18. The exhibits were admitted into the record without objection. Government Counsel withdrew allegation 1.e., and conceded there was no evidence to support allegation 2.h. However, she did not withdraw the allegation, but stated she would not seek a denial of a security clearance based on that allegation. Applicant testified on his own behalf, and did not have any exhibits. The transcript was received on September 27, 2005.

## FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 48 years old and has worked for a federal contractor since 1989. Applicant is divorced and has two children, 11 and 9 years old. Applicant has consistently paid child support for both children. Applicant shares living quarters with his fiancée and they each provide for half of the expenses towards rent and living expenses.

Applicant began using marijuana in 1977 and continued to 2002. During some of that time Applicant had a daily habit of marijuana use. Applicant was arrested on January 1, 1997, and charged with driving under the influence of alcohol. He also admitted to the police that he had inhaled marijuana prior to driving. Applicant was found guilty, placed on probation, and fined \$500.00 plus \$85 in court costs.

Applicant was arrested on January 29, 1998, and charged with possession of marijuana. He was found guilty and was sentenced to 30 days in jail, with 30 days suspended, fined \$300.00, plus \$138.00 in court costs, and placed on one year probation.

Applicant was arrested on June 4, 1998, and was charged with possession of marijuana, driving with a suspended license, and other non-moving traffic violations. Applicant was found guilty of driving on a suspended license and the non-moving traffic violations. The possession charge was nolle prossed.

Applicant received intensive out-patient treatment for his drug abuse from July 1998 to October 1998 at the County Mental Health Center. He was diagnosed, in part, as dependent on cannabis.

Applicant was arrested on September 9, 1998, and charged with felony possession of marijuana. On March 24, 2000, Applicant was ordered to complete a drug diversion program. Applicant received treatment from June 1, 2000 to July 21, 2000, at the Country Mental Health Center. He was again diagnosed as cannabis dependent. Applicant's random drug sample was determined to be diluted on July 17, 2000, and he was subsequently absent from his group session on July 20, 2000. Applicant denied at the time and continues to deny he diluted the sample. Due to this incident, the County Mental Health Center reported Applicant failed the program and on July 27, 2000, Applicant's case was reinstated. On August 1, 2001, Applicant pled guilty to the charge of possession of marijuana 1<sup>st</sup> degree, a felony, and was sentenced to three years in the state penitentiary, with three years suspended. He was placed on two years supervised probation, fined \$250.00 plus court costs, and various fees. Applicant's driver's license was suspended for six months and he was ordered to undergo a substance assessment and complete any recommended treatment, and to submit to any drug or alcohol testing as required. Applicant disputed at the hearing that he was convicted of a felony, but provided no support to show otherwise. Applicant's written sworn statement on May 2, 2003 states, "I was arrested twice in 1998 on marijuana charges. Both arrest[s] were misdemeanors but the second arrest was upgraded to a felony."<sup>(2)</sup> This statement contradicts Applicant's assertion that he believed it was misdemeanor.

Applicant filled out his security clearance application (SCA) on September 3, 1999.<sup>(3)</sup> Applicant provided a sworn statement on May 3<sup>rd</sup>, 2000, stating "I have no intent (sic) to use marijuana or any other illegal substance in the future."<sup>(4)</sup> Applicant admits he continued to use marijuana until July 2002.<sup>(5)</sup> Applicant used marijuana after he applied for a security clearance.<sup>(6)</sup>

Applicant again received intensive outpatient treatment from September 9, 2002 to January 9, 2003, at the Country Mental Health Center and he was again diagnosed as cannabis dependent. Applicant successfully completed the program and claims he has been drug-free since then. Applicant has grown tired of paying for drug treatments, court costs, attorney's fees, fines, and other payments associated with his illegal drug activity. He acknowledges and accepts that using drugs can no longer be a part of his life. Applicant does not associate with people from his past who were involved in drugs. Applicant admits he needs structure in his life and that he is too old to be involved with drugs.<sup>(7)</sup> Applicant has decided it is time to act like a mature adult and take responsibility for his life, which includes being drug-free. Applicant did attend Narcotics Anonymous, but it is unclear if it is ongoing or if he was recommended to receive

any care after his treatment program was completed.

Applicant's friends, co-workers, supervisors and church associates are all unaware of his drug history. Only Applicant's ex-wife and fiancée are aware of it.

Applicant has accumulated delinquent debts dating back to 1996. The chart below lists the specific debts and their current status.

Debt	Nature & Amount	Current Status	Record
SOR 3.a.	Credit Card, \$1,123.00 owed, charged off as bad debt September 1996.	Not paid. Contacted company in 2003 and 2004, no payment plan or further action.	Tr. at 29.
SOR 3.b.	Cable, \$281.00, collection since arch 1997.	Not paid. Contacted in 2003. Required to return cable box. Unable to find, but not resolved.	Tr. at 30.
SOR 3.c.	Auto finance, \$9,353.73, judgment January 1998.	Satisfied through garnishment. Paid in full.	Tr. at 27-28; GE 18.
SOR 3.d.	Auto finance, \$5,665.00, judgment January 1999.	Not paid. Dispute with car dealer.	Tr. at 31-32.
SOR 3.e.	Credit Card, \$800, collection November 1999.	Not paid. Claims payment plan to start on September 27, 2005. No documentation or verification.	Tr. at 32-33.
SOR 3.f.	Medical debt, \$200.00, collection August 2000.	Unpaid. Not contacted creditor. No plan.	Tr. at 34.
SOR 3.g.	Bank, \$208.00, charged off bad debt June 2001.	Contacted creditor in 2004. No plan.	Tr. at 35-36.
SOR 3.h.	Auto finance, \$837.00, charged off as bad debt July 2001.	Applicant alleges this is same debt as in SOR 3.c., but has not been removed from credit report. Disputes.	Tr. at 37.
SOR 3.i.	Medical debt, \$59.00, collection February 2002.	Paid.	Tr. at 29; GE 16.
SOR 3.j.	Telephone, \$120.00, collection August 2002.	Not paid. Never contacted creditor.	Tr. at 38.

Applicant's net monthly remainder from his pay in 2000 was \$363.00.<sup>(8)</sup> Applicant did not have any money in savings.<sup>(9)</sup> Applicant's net monthly remainder from his pay in 2002 was \$179.00 and he had \$924.00 in savings.<sup>(10)</sup> Applicant's financial statement dated May 2, 2003, indicates there is a net monthly remainder of \$1,826.00, after expenses and he has \$3,000.00 in savings.<sup>(11)</sup> It also indicates Applicant was not making payments on his delinquent debts.<sup>(12)</sup> Applicant could not provide an explanation for why he had not used his savings or excess monthly income to satisfy his delinquent debts.<sup>(13)</sup> Applicant has not sought credit counseling.

### POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline J, criminal conduct, Guideline H, drug involvement, and Guideline F, financial considerations, with their respective DC and MC, apply in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome

determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(14)</sup> The government has the burden of proving controverted facts.<sup>(15)</sup> The burden of proof is something less than a preponderance of evidence.<sup>(16)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.<sup>(17)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(18)</sup>

No one has a right to a security clearance<sup>(19)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(20)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(21)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(22)</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline J - Criminal Conduct is a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. Willingness to abide by rules is an essential qualification for eligibility for access to the nation's secrets. A history of illegal behavior indicates an individual may be inclined to break, disregard, or fail to comply with regulations, practices, or procedures concerning safeguarding and handling classified information.

Guideline H-Drug Involvement is a security concern because 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.

Guideline F- Financial Considerations-a security concern exists when a person has significant delinquent debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline J, Guideline F, and Guideline H.

Based on all the evidence Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1 (*Allegations or admissions of criminal conduct, regardless of whether the person was formally charged*), and CC DC E2.A10.1.2.2 (*A single serious crime or multiple lesser charges*) apply. Applicant was arrested, charged, and convicted of various drug and other offenses from 1997 through 2001, including misdemeanors and a felony.

Based on all the evidence, Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1 (*Any drug abuse*<sup>(23)</sup>), and DI DC E2.A8.1.2.2 (*Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or*

*distribution*) apply. Applicant admitted using marijuana from 1977 to 2001. Applicant also was arrested, charged and/or convicted of possession of marijuana, once as a misdemeanor offense and once as a felony.

I considered all the mitigating conditions and specifically considered Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.2.1 (*The conduct was not recent*); CC MC E2.A10.1.2.4 (*The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur*); and CC MC E2.A10.1.3.6 (*There is clear evidence of successful rehabilitation*). I have also considered the mitigating conditions with regards to Applicant's drug involvement, especially Drug Involvement Mitigating Condition (DI MC) E2.A8.1.3.1 (*The drug involvement was not recent*); and DI MC E2.A8.1.3.3 (*A demonstrated intent not to abuse any drugs in the future*).

Applicant's last conviction was in 2001, for a offense he committed in 1998. Applicant has not been in any other trouble since then. Applicant's criminal problems were the result of his drug involvement. Applicant has not used drugs since 2002 and no longer associates with his past friends who were involved in drugs. Applicant has successfully completed intensive out-patient treatment for his drug abuse. Applicant's criminal conduct is not recent and Applicant is committed to not getting into further trouble.

After many years of drug use Applicant had an epiphany. He understands he needs structure in his life. His fiancée has provided the needed support and Applicant is committed to being drug-free. Applicant realizes he is past the age of youthful indiscretion and it is time to act like a mature adult. Applicant claims he has not used drugs since July 2002. Applicant has made claims in the past that he intended to remain drug free, and has attended a drug treatment program three times. He used drugs while going through the security application process and has made sworn statements that he did not intend to use drugs again, and then did. Although at the hearing Applicant was credible in his testimony regarding his future use, his lengthy past use, relapses, and broken promises cannot be discounted. Applicant admittedly has had several relapses with his drug use. Applicant is applauded for taking charge of his life and appears to have his life pointed in the right direction. However, based on Applicant's lengthy history of abuse, and history of relapse and treatment, it is still too soon to be totally convinced that Applicant can continue to remain drug-free. More time is needed to evaluate whether Applicant's drug abstention is short-term or life-long. I find Applicant has mitigated the security concerns regarding his criminal conduct, but failed with regard to his drug involvement.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*), apply in this case. Applicant has accumulated delinquent debts totaling more than \$8,000.00, dating as far back as 1996. Applicant satisfied two debts, one was through a judgment and garnishment. Applicant has made minimal effort to take charge of his finances and pay off his old debts, despite having the means to do so.

I considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC E2.A6.1.3.1 (*The behavior was not recent*), FC C E2.A6.1.3.3 (*The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)*), FC MC E2.A6.1.3.4 (*The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Applicant has been steadily employed since 1989. Since at least 2000 Applicant has shown a surplus at the end of each month that could be used to make payments towards his delinquent debts, but he has not done so. Applicant has accumulated savings, but has not used any of it to pay these debts. The debts are recent because they have not been satisfied. Applicant did not provide any evidence to suggest any conditions beyond his control were the cause of his financial problems. Applicant has not sought credit counseling. Applicant's efforts to pay off his creditors are limited to making contact with some of them 1-2 years ago, but not setting in motion any concrete plan or making any payments towards the debts. Applicant has failed to mitigate the security concerns regarding his finances.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their

acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered the whole person and I find although Applicant has made great strides in putting his life back on track, it is still too soon to be totally convinced that drugs no longer are a part of his life. In addition, Applicant has failed to focus on resolving his financial problems. Applicant has mitigated the security concern with regard to his criminal conduct, but failed regarding drug involvement and financial considerations. I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guidelines J is decided for Applicant, and Guideline H and F are decided against Applicant.

### **FORMAL FINDINGS**

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

#### **Paragraph 1: Criminal Conduct (Guideline J) FOR THE APPLICANT**

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

#### **Paragraph 2: Drug Involvement (Guideline H) AGAINST THE APPLICANT**

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against the Applicant

Subparagraph 2.c. Against the Applicant

Subparagraph 2.d. Against the Applicant

Subparagraph 2.e. Against the Applicant

Subparagraph 2.f. Against the Applicant

Subparagraph 2. g. Against the Applicant

Subparagraph 2. h. For the Applicant

#### **Paragraph 3: Finances (Guideline F) AGAINST THE APPLICANT**

Subparagraph 3.a. Against the Applicant

Subparagraph 3.b. Against the Applicant

Subparagraph 3.c. For the Applicant

Subparagraph 3.d. Against the Applicant

Subparagraph 3.e. Against the Applicant

Subparagraph 3.f. Against the Applicant

Subparagraph 3.g Against the Applicant

Subparagraph 3.h. Against the Applicant

Subparagraph 3.i. For the Applicant

Subparagraph 3.j. Against the Applicant

Subparagraph 3.k. Against the 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 Applicant. Clearance is denied.

Carol. G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. GE 3.
3. GE 1.
4. GE 2.
5. Tr. at 49.
6. *Id.*
7. Tr. at 66.
8. GE 2.
9. *Id.*
10. GE 3.
11. GE 4.
12. *Id.*
13. Tr. at 41.
14. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
15. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
16. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
17. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, ¶ E3.1.15.
18. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15.

19. *Egan*, 484 U.S. at 531.

20. *Id.*

21. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

22. Executive Order 10865 § 7.

23. E2A8.1.1.2.1 defines drug abuse as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.