

DATE: March 5, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-12350

**DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Marc E. Curry, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's marijuana use was not recent, and he has demonstrated a credible intent not to use it in the future. Clearance is granted.

**STATEMENT OF THE CASE**

On February 26, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to 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 applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on April 2, 2002, and elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's written case (FORM) on or about July 17, 2002. Applicant filed a response to the FORM on or about September 10, 2002. Department Counsel did not object to applicant's response. The case was assigned to me on October 16, 2002.

**FINDINGS OF FACT**

Applicant is a 32 year old quality engineer. He has been employed by the same defense contractor since 1997.

In February 2000, applicant was moved to a position in his company that required him to have a security clearance. In March 2000, he completed an Electronic Personnel Security Questionnaire (EPSQ). On said EPSQ he disclosed the fact that he had used marijuana from March 1993 through December 1999. In a signed, sworn statement he gave to a Special Agent of the Defense Security Service (DSS) in March 2001, he stated that he "smoked marijuana an average of twice a week" from March 1993 to December 2000. As to any future use, he stated: " I do not intend to ever use marijuana again . . . I love my work and would do nothing to jeopardize my work at (employer), or national security."

In his response to the SOR, prepared about a year after he gave the foregoing statement forswearing future marijuana use, applicant stated that he has been "100% successful in ending" his marijuana use.

A 2000 performance appraisal submitted by applicant indicates that he performs well at his job.

## **POLICIES**

Enclosure 2 of the Directive sets forth Guidelines (divided into Disqualifying Factors and Mitigating Factors) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Disqualifying Factors and Mitigating Factors are applicable:

### **Drug Involvement**

#### Disqualifying Factors

1. E2.A8.1.2.1: Any drug abuse.
2. E2.A6.1.2.2: Illegal drug possession.

#### Mitigating Factors

1. E2.A8.1.3.1: The drug involvement was not recent.
2. E2.A8.1.3.3: A demonstrated intent not to abuse any drugs in the future.

## **CONCLUSIONS**

In DOHA cases, the Government has the initial burden of establishing a *prima facie* case by producing evidence that reasonably suggests an applicant might deliberately or inadvertently fail to properly safeguard classified information. Once the Government establishes a *prima facie* case, the burden shifts to applicant to produce evidence in refutation, extenuation, mitigation or reformation sufficient to establish that, notwithstanding the Government's *prima facie* case, he or she can be relied upon to safeguard classified information. In view of the Directive's requirement that a security clearance be granted only upon a finding that to do so is clearly consistent with the national interest, the applicant has a heavy burden.

### **The Government established a prima facie case under Guideline H**

The evidence establishes that applicant used marijuana an average of twice a week from March 1993 to December 2000. Applicant's use of marijuana reflects adversely on his judgment, reliability and trustworthiness, and suggests that he cannot be relied upon to safeguard classified information for at least two reasons:

First, individuals granted access to classified information are responsible for safeguarding it 24 hours per day, 7 days per week, on and off the job. An applicant who uses marijuana cannot be relied upon to meet his or her security responsibilities because the risk of an unauthorized disclosure of classified information through neglect or inattention while "high" is too great.

Second, applicant used marijuana for many years with full knowledge that each time he used it he was breaking the law. This suggests that applicant may be unwilling to abide by security regulations if he finds them in conflict with his personal wishes or desires.

### **Applicant established that he has reformed.**

Applicant has stated that he has not used marijuana since December 2000, and that he will not use it in the future. Considering the evidence as a whole, including the fact that applicant truthfully disclosed his marijuana use when first asked about it on the EPSQ, I find his statements to be credible and worthy of belief.

Applicant qualifies for mitigating factors E2.A8.1.3.1 and E2.A8.1.3.3 of the Drug Involvement Adjudication Policy. He qualifies for the first mitigating factor because his marijuana use was not recent, and he qualifies for the second mitigating factor because he has demonstrated a credible intent not to abuse any drugs in the future. Given the passage of time since applicant last used marijuana, and his credible statements that he will not use it in the future, I conclude that in all likelihood, applicant's abuse of marijuana is a thing of the past. For this reason, Guideline H is found for applicant.

**FORMAL FINDINGS**

PARAGRAPH 1: 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.

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Joseph Testan

Administrative Judge