

DATE: May 5, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-16372

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's approximately 20 months of abstinence, together with his credibly stated intention not to use marijuana in the future, is sufficient to overcome the Government's case under Guideline H. Clearance is granted.

STATEMENT OF THE CASE

On August 7, 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 August 25, 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 October 11, 2002. Applicant filed a response to the FORM on November 7, 2002. The case was assigned to me on December 10, 2002.

FINDINGS OF FACT

Applicant is a 25 year old employee of a defense contractor.

Applicant used marijuana with varying frequency from May 1996 to February 2001. His last use of marijuana in February 2001 occurred after the security clearance application process had begun. ⁽¹⁾ Applicant never purchased or sold marijuana. Marijuana is the only illegal drug that he has used.

In a signed, sworn statement that he gave to the Defense Security Service (DSS) in May 2001, applicant stated that he "had no real plan to use marijuana in the future."

In his response to the FORM, applicant stated that his use of marijuana in February 2001 occurred during an "unexpected social situation," and he has "since stopped associating with the people and places that lead (sic) to incident." He further stated that he has not used marijuana since that February 2001 incident, and that he "would not use it again."

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.A8.1.2.2: 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

The evidence establishes that applicant used marijuana with varying frequency from May 1996 to February 2001. This illegal conduct reflects adversely on his judgment, reliability and trustworthiness, and suggests that he cannot be relied upon to safeguard classified information.

Applicant has abstained from the use of marijuana since February 2001. His approximately 20 months of abstinence, together with his credibly stated intention not to use marijuana in the future, is sufficient to overcome the Government's case under Guideline H. Accordingly, it is now clearly consistent with the national interest to grant him access to classified information.

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.

Joseph Testan

Administrative Judge

1. Applicant had executed the Security Clearance Application in December 2000.