

DATE: August 19, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-18959

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN G. METZ, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

Jonathan A. Beyer, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's recreational abuse of marijuana from 1989 to August 2000 was not mitigated where Applicant had left open the possibility of future use during a subject interview in December 2000, and his February 2002 statement of intent to refrain from drug use in the future was not credible. Clearance denied.

**STATEMENT OF THE CASE**

On 31 January 2002, 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<sup>(1)</sup> that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 26 February 2002, Applicant answered the SOR and requested an administrative decision on the record. Applicant did not respond to the Government's File of Relevant Material (FORM)--issued 26 April 2002; the record in this case closed 2 June 2002, the day the response was due at DOHA. The case was assigned to me on 29 July 2002. 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; accordingly, I incorporate the admissions as findings of fact.

Applicant--a 32-year old employee of a defense contractor--seeks access to classified information.

On 28 February 2000, Applicant disclosed his drug abuse history on a Security Clearance Application (SCA)(SF 86) (Item 4): Marijuana 12 times between January 1993 and June 1999. Although he did not list it in his SCA, he had also bought and used hashish while in a foreign country known to be lax about recreational drug abuse. In a sworn statement on 1 December 2002 (Item 5), Applicant described his drug abuse history:

Background. On my SF-86, I listed past use of marijuana. Philosophy. I believe that the use of soft drugs such as

marijuana should be decriminalized. . . Dates of Marijuana Use. From the time I started college at [named] State University. . . in fall 1989 to August 2000. Perspective on Dates of Use. Prior to my most recent use in August 2000, I had last used marijuana in January 1997. Number of times used. I probably used marijuana no more than 10 times in my life; all of which occurred between Fall 1989 to August 2000. Frequency of use. The greatest frequency of use occurred when I first began using marijuana in Fall 1989. At that time, I used marijuana about monthly. In 1994, I graduated from [named] State University. Subsequently, from 1994 to January 1997 I used marijuana on two or three occasions. . . Effect. Marijuana made me feel paranoid. By paranoid, I mean that I felt I was losing (sic) control of my faculties. Additionally, when I used marijuana, I slurred my words and could not think clearly. Therefore, I did not like marijuana. Why Use. [DSS agent] asked, why then did I use something I didn't like about ten times. My response. Fair question. Initially, I smoked marijuana out of curiosity. I continued to use marijuana as a result of social pressure in the sense of wanting to bond with friends. . . Why. [DSS agent] said that it seemed odd that I would have used marijuana again (use in August 2000), considering that I said that I never liked its effect. My response. I had simply forgotten the fact that I did not care for the effect marijuana had on me. Again, in August 2000, I used marijuana on the spur of the moment. . . Future intentions. Although I feel I have outgrown marijuana and that I will probably will not use marijuana in the future, I cannot say that it will not happen again.

In his Answer, Applicant explained his equivocation on his future intent:

At the time when this question was posed to me, I could not honestly say that I would refrain from using marijuana in the future. However, in the time since I made that statement, I have totally abstained from using marijuana and do not associate with individuals known to use marijuana. I now know that my career and personal interests preclude the use of marijuana in my life and I have no further interest in using marijuana at present or in the future.

I would like state for the record that I currently DO NOT use and in the future WILL NOT use marijuana.

### **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:

### **DRUG INVOLVEMENT (GUIDELINE H)**

E2.A8.1.1. The Concern:

E2.A8.1.1.1. 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.

E2.A8.1.1.2. Drugs are defined as mood and behavior-altering substances.

E2.A8.1.1.2.1. Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants and hallucinogens); and

E2.A8.1.1.2.2. Inhalants and other similar substances,

E2.A8.1.1.3. Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

E2.A8.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A8.1.2.1. Any drug abuse (see above definition);

E2.A8.1.2.2. Illegal drug possession, including . . . purchase,

E2.A8.1.3. Conditions that could mitigate security concerns include:

E2.A8.1.3.1. The drug involvement was not recent;

E2.A8.1.3.3. A demonstrated intent not to abuse any drugs in the future.

### **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 has established its case under Guideline H, and the Applicant has not mitigated the conduct. Applicant was a recreational abuser of marijuana from approximately 1989 to August 2002. Clearly, the illegality of the conduct did not affect Applicant's decision to use marijuana. Indeed, Applicant continued to use marijuana, and resumed use in August 2000, despite his claim that he did not like the way it made him feel. Further, despite his claim that he did not like the way it made him feel, he could not state unequivocally that he would not use marijuana in the future when asked about his future intentions in December 2002, even though the drug question on the SCA put him on notice that drug use was incompatible with access to classified material. Although Applicant now vows to refrain from marijuana abuse, I find that vow neither credible nor sufficient to constitute a demonstrated intent to refrain from drug abuse in the future, particularly given Applicant's past use, his contradictory statements about the extent of his drug use, his equivocal statement about future intent, and his acknowledged preference for legalization of marijuana use. Accordingly, I resolve Guideline H. against Applicant.

### **FORMAL FINDINGS**

Paragraph 1. Guideline H: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: 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.

**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 (Directive).