

DATE: February 2, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-21050

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Twenty five year old Applicant first used marijuana in 1995, and he last used it in 1999. He has stated that he does not intend to use marijuana in the future. Applicant no longer associates with friends who use marijuana. Mitigation has been established. Clearance is granted.

STATEMENT OF THE CASE

On June 4, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under Guideline E (Personal Conduct) and Guideline H (Drug Involvement) 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 conduct proceedings and determine whether clearance should be granted or denied.

In a signed and sworn statement, dated June 27, 2003, Applicant responded to the SOR allegations. He requested that his case be decided on the written record in lieu of a hearing. On September 4, 2003, Department Counsel prepared the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed no response to the FORM. The case was assigned to this Administrative Judge on October 27, 2003.

Department Counsel offered five documentary exhibits (Exhibits 1-5), which were admitted without objection. Applicant offered no documentary evidence into the record.

FINDINGS OF FACT

The Government opposes Applicant's request for a security clearance, based upon the allegations set forth in the SOR. The SOR contains two allegations, one allegation, 1.a., under Guideline E (Personal Conduct), and one allegation, 2.a., under Guideline H (Drug Involvement).

In his response to the SOR, Applicant admits both allegations. These allegations are incorporated as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR and the admitted documents, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is 25 years old. He is employed by a defense contractor, and he seeks to retain a DoD security clearance in connection with his employment in the defense sector.

Paragraph 1 (Guideline E - Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he associates with friends who use marijuana in his presence. Applicant admitted that this had been true in the past, and he even furnished the names of those individuals with whom he associated (Exhibit 6). In Applicant's response to the SOR, he stated, "I no longer associate with those who use marijuana in my presence." (Exhibit 3.) **Paragraph 2 (Guideline H - Drug Involvement)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he abused marijuana. Applicant first used marijuana in 1995 when he was 17 years old. During the period from 1995 to 1999 he used marijuana approximately one time a month. He never purchased the marijuana; it was always provided to him at no cost. In a signed, sworn statement that Applicant made to a Defense Security Service agent in August 2001, he stated that he stopped using marijuana completely in 1999 (Exhibit 5).

Applicant never used any other illegal substances (Exhibit 5).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision.

Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. **Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:**

Guideline E (Personal Conduct)

(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.

Condition that could raise a security concern and may be disqualifying include:

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

Conditions that could mitigate security concerns include:

(E2.A5.1.3.7.) Association with persons involved in criminal activities has ceased.

Guideline H (Drug Involvement)

The Concern: 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.

Drugs are defined as mood and behavior altering substances, and include:

(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.

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

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 cultivation, processing, manufacture, purchase, sale, or distribution;

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.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of drug abuse and conduct that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be

a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegation set forth in the SOR:

Paragraph 1 (Guideline E - Personal Conduct) The evidence has established that Applicant has associated with individuals who were using marijuana. This falls within Disqualifying Condition (DC) (E2.A5.1.2.6.). However, I find that Mitigating Condition (MC) (E2.A5.1.3.7.) applies to Guideline E because Applicant no longer associates with any former friends who still use marijuana. I conclude it unlikely that Applicant will associate with drug users in the future, and thus, I find Guideline E. for Applicant.

Paragraph 2 (Guideline H - Drug Involvement) The government has established its case under Guideline H, but I consider the conduct mitigated. Applicant abused marijuana for four years, from 1995 to 1999, during the years that he was 17 to 21 years of age. Applicant has been drug free since 1999, almost five years. Applicant used marijuana during the youthful period of his life. He has matured and now realizes that he does not want drugs to be a part of his life.

Applicant's overall conduct pertaining to his illegal substance abuse clearly falls within Drug Involvement DC (E2.A8.1.2.1.), any drug abuse, and DC (E2.A8.1.2.2.), illegal drug possession. I find that MC (E2.A8.1.3.1.) applies to Guideline H., Applicant's drug abuse was not recent and MC (E2.A8.1.3.3.) also applies as he has demonstrated an intent to refrain from drug abuse in the future, by not using drugs for an extended period of time. I conclude it unlikely that Applicant will return to marijuana use in the future. Accordingly, I find Guideline H. for Applicant.

In this case, the Government has met its initial burden of proving that Applicant has used illegal drugs under (Guideline H) and that he has associated with people involved in criminal activity (Guideline E). However, Applicant has introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him.

On balance, I conclude that Applicant has overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding for Applicant as to the allegations expressed in Paragraphs 1 and 2 of the Government's SOR.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: FOR THE APPLICANT.

Subparagraph 1.a.: For the Applicant.

Paragraph 2: FOR THE APPLICANT.

Subparagraph 2.a.: 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.

Martin H. Mogul

Administrative Judge