

DATE: October 20, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-21106

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 54-year-old employee of a government contractor used marijuana for 34 years. He has asserted an intention to resume using as soon as he no longer needs a clearance. He also has financial concerns for deliberate failure to file federal income tax in a timely fashion in an effort to conceal financial information from a separated spouse. Clearance is denied.

STATEMENT OF CASE

On December 18, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Information Within Industry*, 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 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated April 12, 2003, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on May 6, 2003. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not do so. The case was assigned to, and received by me on September 2, 2003.

FINDINGS OF FACT

After a complete and thorough review of the information in the record, and upon due consideration of same, I make the following findings of fact.

Applicant, a 54-year-old employee of a government contractor, used marijuana for 34 years. He also has financial and personal conduct concerns in that he has deliberately withheld payment of federal income taxes as a means of pressuring his wife from whom he was separated regarding a divorce to keep her from obtaining information about his finances.

In 2001 Applicant stated that he intended to cease the use of marijuana so long as he held a security clearance but would resume his illegal drug use when he no longer needed a clearance. He stated that he had used marijuana since college days and that it caused him no work related or financial problems. In a subsequent statement in 2003 he indicated that he had ceased use of marijuana.

POLICIES

[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information." *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

The applicable Guidelines cited in the SOR concern the following Disqualifying Conditions (DC):

Drug Involvement Guideline H:

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 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 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 any drug abuse based on the above definition.

Conditions that could mitigate security concerns include: A demonstrated intent not to abuse any drugs in the future, and satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable diagnosis by a credentialed medical professional.

Financial Considerations Guideline F:

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations or an unwillingness to satisfy debts.

Conditions that could mitigate security concerns include the fact that the behavior was largely beyond the person's control, that he has received counseling, and that he has initiated good faith effort to repay creditors and resolve debts.

Personal Conduct Guideline E:

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.

Conditions that could raise a security concern and may be disqualifying include a pattern of dishonesty or rule violations.

Conditions that could mitigate security concerns include the fact that the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

The government has cited Disqualifying Condition (DC) 1 under Guideline H in the SOR concerning drug involvement as relevant to the proposed denial of a security clearance for the Applicant. Drug involvement is always a security concern because it raises questions about a person's willingness or ability to protect classified information. Any drug abuse is a condition that may be disqualifying. E2.A8.1.1.3 provides the following definition: "Drug abuse is the illegal use of a drug"

Mitigating Condition (MC) 2 might apply if there is "[a] demonstrated intent not to abuse any drugs in the future." However, the Applicant has stated he would likely continue to use in the future when he had no need for a security clearance. Although his 2003 statement indicates that he has ceased use his prior usage for 34 years, his earlier statement raises significant questions about the credibility of the later statement. These discrepancies raise serious questions concerning his judgment and trustworthiness to hold a security clearance.

With regard to Guidelines E and F Applicant has shown an unwillingness to comply with legal requirements for filing tax returns. This pattern of failing to meet financial obligations and of violations of rules justify a finding against Applicant on these two allegations. No Mitigating Conditions are applicable.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is not clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline H: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Paragraph 2. Guideline E AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Paragraph 3. Guideline F AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: Against Applicant

Subparagraph 3.c.: Against Applicant

DECISION

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge