

DATE: October 3, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-23671

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's inability or unwillingness to state, without equivocation, that he will not use marijuana in the future precludes a finding that it is now clearly consistent with the national interest to grant him access to classified information. Clearance is denied.

STATEMENT OF THE CASE

On January 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 March 6, 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 May 28, 2002. Applicant did not file a response to the FORM. The case was assigned to me on July 15, 2002.

FINDINGS OF FACT

Applicant used marijuana, an average of twice monthly, from September 1977 to at least November 1997. Some of this use occurred while he held a DoD security clearance. He purchased marijuana during the time he was using it.

In a signed, sworn statement that he gave to the Defense Security Service (DSS) in December 1999, applicant stated the following:

As far as my future intentions toward marijuana use are concerned, it depends on the outcome of this investigation. I will not use marijuana if I get the access because I know that I should not. If I do not get the program access, I will

continue to use marijuana. If I had to not use it to hold a clearance, I would also continue not to use it. If I was not in this environment (aerospace) and did not need access, I would also continue to use marijuana because it is something that I enjoy.

In his response to the SOR, applicant stated the following about his marijuana use and his future intentions:

In 1997, I discontinued the activities at my own volition, in the interest of being approved {apparently for a special access program} and in having the widest variety of employment opportunities. However, discontinuance did not seem to have a direct bearing on the approval or denial - only the acknowledgment of past activities. It was following this consideration that my existing clearance came into question and this current re-evaluation was initiated. If it {sic} receiving any new or maintaining any existing clearances was contingent on discontinuing the activity (regardless of any acknowledged past activities), I would comply with the discontinuance in accordance with DoD Directive 5220.6, Dated January 2, 1992, Enclosure 2, Attachment 8, Guideline H, paragraph E2.A8.1.3.3.

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.

CONCLUSIONS

The evidence establishes that applicant used marijuana an average of twice a month from September 1977 to at least November 1997. During half of these twenty years of marijuana use, applicant held a DoD security clearance. Applicant's conduct reflects adversely on his judgment, reliability and trustworthiness, and strongly suggests that he cannot be relied upon to safeguard classified information.

Although applicant has apparently abstained from the use of marijuana since approximately November 1997, his inability or unwillingness to demonstrate an unequivocal, unconditional intent not to use marijuana in the future precludes application of mitigating factor E2.A8.1.3.3, and precludes a finding that it is now clearly consistent with the national interest to grant him access to classified information.

FORMAL FINDINGS

PARAGRAPH 1: 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.

Joseph Testan

Administrative Judge