

DATE: September 30, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-23677

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant used marijuana on a number of occasions between approximately 1998 and 2001. He was arrested in a bedroom he had been sleeping in when police executed a search warrant on January 25, 2002. The police found a large quantity of cocaine, other controlled substances, drug paraphernalia, and drug-packaging material in the bedroom. While the charges were eventually dismissed against Applicant because of his cooperation with prosecuting officials and his brother accepting responsibility for the drug possession, the evidence establishes Applicant was aware the drugs were being stored in the room he was using as a bedroom and that his brother was dealing drugs from that room. Clearance is denied.

STATEMENT OF THE CASE

On April 3, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(U\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline E for personal conduct and Guideline H for drug involvement.

Applicant submitted an answer to the SOR on April 24, 2003, and requested a hearing. Applicant admitted the allegations contained in the SOR, except for the allegations that he was arrested for possession of a firearm.

The case was assigned to an administrative judge on May 8, 2003, reassigned to a different administrative judge on July 2, 2003, and then reassigned to me on July 18, 2003 when it was learned that Applicant was temporarily located in a different geographical region than his normal home. A notice of hearing was issued on July 24, 2003, scheduling the hearing for August 6, 2003. The hearing was conducted as scheduled.

The government submitted five documentary exhibits at the hearing that were marked as Government Exhibits (GE) 1-5 and admitted into the record without an objection. Applicant testified at the hearing and did not submit any exhibits. The record was held open for three weeks, without an objection from the government, to give Applicant the opportunity to submit documentation in support of his case if he chose to do so. No documents were received. The transcript was received on August 13, 2003.

FINDINGS OF FACT

Applicant's partial admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings and exhibits, and consideration of the testimony presented, I make the following findings of fact:

Applicant is 22-years-old, single, a college student, and employed as a student research associate/engineer by a defense contractor. He attends a university located in the same city where his parents and siblings reside. In January 2003, he was using a small outbuilding, located a few feet to the rear of his parents' house, as a bedroom. He had been using that outbuilding as his bedroom for somewhere between three weeks and a month as of January 25, 2002. He was the sole occupant of that room, and was alone and asleep therein, when police executed a search warrant looking for controlled substances at approximately 6:29 a.m. on January 25, 2002.

During the course of executing the search warrant, the police found the following items in the room where Applicant had been sleeping:

-2 baggies containing cocaine; one containing approximately 4.5 ounces and a second containing approximately 0.7 ounces (located in the second drawer down from the top of the dresser);

-0.8 grams methylenedioxy methamphetamine [ecstasy] (located in the third drawer down from the top of the dresser);

-a baggy containing 0.8 grams marijuana (located in a refrigerator);

-0.2 ounces of cocaine (located in the fourth drawer down from the top of the dresser);

-2 pounds, 8.1 ounces of cocaine compressed into a brick shape, wrapped in plastic wrap and placed inside a shoe box (located in the closet);

-4.8 ounces of marijuana in a tan shopping bag (located in the closet);

-2.8 ounces of cocaine inside a red and white plastic shopping bag (located in the closet);

-0.1 ounces of marijuana (located under the bathroom sink);

-3.6 ounces of marijuana, loose and in baggies, in a green duffel bag (located in the closet);

-0.05 ounces of marijuana on a tray under a chest of drawers;

-a small scale, cut [a substance used to reduce the concentration of a controlled substance], and a hammer with a white residue on the head (located in the bottom drawer of the night stand); and

-2 large trash bags containing wrappers used for packaging kilogram quantities of cocaine (located in the closet).

Applicant admitted to the police that he knew there was cocaine located in the closet of the room in which he was arrested, but claimed it belonged to his brother. He also provided the police the address where his brother lived and informed them that his brother kept the money from his drug dealing at that address.

Applicant was charged with Possession of a Controlled Substance/narcotic, Possession of Marijuana, and Possession of a Firearm as a result of the evidence gathered by the police during the execution of the search warrant on January 25, 2002. The firearm he was charged with possessing had actually been located during the search of the main house. Applicant was never observed to be in possession of the weapon or in the premises where the weapon was located. All charges that had been filed against Applicant were dismissed on or about October 2, 2002, in light of the unspecified cooperation he provided in the case, and because of his brother's acceptance of responsibility for the cocaine that was seized.

Applicant used marijuana on at least several occasions in his senior year of high school from 1998-1999. He also used marijuana on at least 2-3 occasions during his first semester of college in the fall of 1999. He again used marijuana on at least two occasions between January 2000 and August 2001. Applicant intentionally provided a false answer in the security clearance application (SF 86) he submitted on June 22, 2001 when he answered "Yes" to question 27: *Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana . . .* but then claimed to have only used marijuana on five occasions and all uses having occurred between February 1, 1999 and March 1, 1999. He provided the false information because he was concerned that answering truthfully would reflect poorly on his judgment.

Having given full consideration to Applicant's appearance and demeanor while testifying, the answers he provided during cross-examination, the false information he provided in the SF 86, and the multiple locations and types of drugs and drug paraphernalia found, I find Applicant testified falsely at the hearing when he: denied knowing that his brother was dealing drugs from the room in which he was arrested; denied knowing there was cocaine, other illegal drugs, or drug packaging materials in the closet; denied he had ever entered the closet; and denied he made a statement to

police that he knew there were drugs in the closet.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline E, pertaining to personal conduct, and H, pertaining to drug involvement, with their respective DC and MC, are most relevant in this case.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²⁾ The government has the burden of proving controverted facts.⁽³⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence⁽⁴⁾, although the government is required to present substantial evidence to meet its burden of proof.⁽⁵⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁶⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

No one has a right to a security clearance⁽⁹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹¹⁾

CONCLUSIONS

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. 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.

Applicant has used a controlled substance, marijuana, on a number of occasions, the last known time occurring two months after he submitted a SF 86 seeking a security clearance in June 2001. He was also found in sole control of a small outbuilding that contained a large amount and variety of controlled substances and drug paraphernalia. His denials of knowledge of the existence of the controlled substances and actual knowledge that his brother was using the building for narcotics dealings are not credible. The evidence does not support a finding that Applicant was in possession of the firearm that was found in the main house during the course of the search despite his having been charged with that offense.

Disqualifying Condition (DC) 4: *Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail*; and DC 5: *A pattern of dishonesty or rule violations* apply in this case.

I have considered all Mitigating Conditions (MC) and conclude none apply. Having found that Applicant was not credible in the testimony he provided concerning his brother's criminal activities and the controlled substances that were found in the room in which he was alone and asleep, I cannot find that MC 5: *The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress* despite the dismissal of the charges that was at least in part in return for cooperation which Applicant denies he provided, other than going to his own attorney's office when requested. C 7: *Association with persons involved in criminal activity* also does not apply, because, although he apparently does not have any contact at present with his brother who is serving a 10-year prison sentence, he does still have contact with his brother-in-law, who was also convicted of offenses arising from the execution of the search warrant.

Under Guideline H illegal drug involvement raises questions about an individual's willingness or ability to protect classified information. Involvement with or use of an illegal drug indicates unwillingness or inability to abide by the law. Cleared employees must respect regulations whether they agree with them or not. If they do not respect the rules on illegal substances, they may not respect the rules designed to protect classified information.

Applicant used marijuana on a number of occasions between approximately the fall of 1998 and August 2001. He also was arrested alone in a room containing large and varied quantities of controlled substances, packaging material, and other drug paraphernalia on January 25, 2002. His denials of knowledge of the presence of the controlled substances that were found during the execution of the search warrant are not credible.

DC 1: *Any drug abuse*; and DC 2: *Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution* apply in this case. In consideration of all of the evidence, and most specifically the lack of credibility exhibited by Applicant in preparing the SF 86 he submitted in June 2001, his use of a controlled substance after submission of the SF 86, his arrest following submission of the SF 86, and the testimony he provided at the hearing that I have found to not be credible, I do not find any Mitigating Condition apply as to Applicant's drug involvement.

After considering the evidence of record in this case, and weighing the disqualifying conditions against the mitigating conditions, I find that Applicant has failed to mitigate the security concerns caused by his personal conduct and drug involvement. He has failed to overcome the case against him or satisfy his ultimate burden of persuasion. Guideline E and Guideline H are decided against Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline E: Against the Applicant

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

SOR ¶ 2-Guideline H: Against the Applicant

Subparagraph a: Against the Applicant

Subparagraph b: 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.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id* at 531.
11. *Egan*, Executive Order 10865, and the Directive.