

DATE: February 10, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-25340

**DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

**APPEARANCES**

**FOR GOVERNMENT**

Jonathan A. Beyer, Department Counsel

**FOR APPLICANT**

Archie C. Berkeley, Jr., Esquire

**SYNOPSIS**

Between 1972 and 1998, the Applicant used marijuana approximately 1,000 times. The Applicant has changed his lifestyle, no longer associates with individuals who use marijuana, intends never to use marijuana again, and has not used it for more than four and one-half years. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from his prior marijuana use, clearance is granted.

**STATEMENT OF THE CASE**

On June 17, 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 [\(U\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On July 2, 2002, the Applicant answered the SOR and requested a hearing. The case was assigned to me on September 30, 2002. A Notice of Hearing was issued on November 7, 2002, scheduling the hearing, which was held on November 25, 2002.

The Government's case consisted of one exhibit (Gov Ex). The Applicant relied on his own testimony, that of three additional witnesses, and one exhibit (App Ex). The transcript (tr.) of the hearing was received on December 4, 2002.

**FINDINGS OF FACT**

The SOR alleges drug involvement (Guideline H). The Applicant admits he previously used marijuana, but has not used it for almost five years.

The Applicant is 48-years-old, has worked for a defense contractor since May 1998, and is seeking a security clearance. He is honest, direct, sober, discrete, reliable, dependable, an independent thinker, has integrity, a good sense of humor, is dedicated, and hard working. He is a valuable and outstanding employee who handles himself well.

In 1972, during the summer between his sophomore and junior years of high school, the Applicant first used marijuana.

During his remaining time in high school, he used marijuana, at times, daily. Following high school, he attended one year of college before dropping out because he spent too much time smoking marijuana and not enough studying. During this time in college, he was using marijuana daily. (tr. 35) The prevailing attitude in college toward marijuana was one of acceptance. From 1974 to 1980, he sold real estate and used marijuana several times a week. (tr. 37) In 1980, his use became more erratic sometimes using marijuana several times a week and then abstaining for several months.

In 1980, he formed an electrical company, which grew to employ five employees, doing residential and light commercial work. He ran the business for approximately 20 years. (tr. 22) While working in the construction business, the Applicant engaged in recreational use of marijuana with his friends. In 1984, he married<sup>(2)</sup> and in August 1986 his daughter was born. With her birth, his life took on a new complexity. Following the birth of his daughter, his use of marijuana was significantly reduced to once a week. (tr. 40)

In 1990, he had back surgery and was laid up and did not work for three months. After returning to work, he knew he did not want to be doing this same job when he was 50. In 1993, he made the decision go back to school to get his electrical engineering degree. (tr. 23) In 1993 and 1994, he attended school part-time during the evenings and continued to work full time with his company. In 1995, he decided with the support of his wife, to attend school full-time. The Applicant's association with construction workers ended in 1995 when he returned to school full time. Prior to that, marijuana was not excluded at social occasions. In 1997, he graduated as an electrical engineer having been inducted into a national honor society. Following graduation, the Applicant did not smoke marijuana for six months. After graduation, the Applicant tried a sales job selling electrical materials, but decided that job was not for him. Due to the stress of his sales job, he would smoke marijuana with his buddies once or twice a week. (tr. 42)

In February 1998--at age 43, he stopped using marijuana and several months later got his current job. He has separated himself from the use of marijuana. Several years ago, there were a few social occasions when he still associated with friends in the construction business. At parties, the Applicant stayed away from those using marijuana. He was invited to partake, but stated, "Thank you, no, I don't do that any more." (tr. 43-44) His life as an engineer is different from that when he was in construction work. He no longer associates with friends and associates who use marijuana. (tr. 48) He has made a commitment not to use marijuana again. (tr. 51)

The Applicant stated his main motivation for ceasing his use:

Main motivation for ceasing it as the fact that I was in this new life. It was also a requirement of my work, that I work in a drug free environment. Certainly the other reason that factored into it was the fact that my life had changed.

It was no longer something that was a social event. It wasn't -- the group of people [with which] I associate now don't expect that we're going to step outside and go smoke a joint, whereas with the group I was with in my construction life, that was a fairly common event. . . (tr. 45)

On the Applicant's Security Clearance Application, Standard Form (SF) 86, (Gov Ex 1) he answered question 27 by saying he had used marijuana 1,000 between June 1972 through February 1998. During this time period, there were periods of months to years when he did not use marijuana. He came up with the figure of 1,000 uses by determining there were 1,500 weeks during the period between when he first used marijuana in high school and when he stopped using and arrived at this estimated figure. (tr. 32) His use was recreational social use during the evenings and on weekends.

In the late 1980's early 1990's, the Applicant became active in his church's work with Habitat for Humanity as well as at a camp for underprivileged, inner city, youth. He has done electrical work on several church projects including the rewiring of a house and another building at the camp. He also volunteers at a half way house, soup kitchen, city mission, and for an organization which helps the community's homeless. (tr. 27, 49)

## **POLICIES**

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent

with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. 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.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

**Drug Involvement** (Guideline H) 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. (E2.A8.1.1.1. )

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

1. Any drug abuse. (E2.A8.1.2.1.);
2. Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution. (E2.A8.1.2.2.)

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

1. The drug involvement was not recent. (E2.A8.1.3.1.)
3. A demonstrated intent not to abuse any drugs in the future. (E2.A8.1.3.3.)

### **BURDEN OF PROOF**

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the Applicant who must remove that doubt and establish his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the 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 is nonetheless security worthy. As noted by the United States Supreme Court in *Department of 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." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the applicant.

### **CONCLUSIONS**

The Government has satisfied its initial burden of proof with regard to its security concerns over Applicant's drug involvement (Guideline H). The Applicant has a twenty-six-year history of illegal drug use starting in 1972, when the Applicant was in high school, and ending on February 1998, when the Applicant was 43 years old. Disqualifying Condition (DC) 1-(3) applies. Because he possessed illegal drugs when he used them, DC 2-(4) also applies.

The Applicant has not used illegal drugs in more than four and one-half years and no longer associates with those who used marijuana. He understands illegal drug usage is incompatible with the career path he has chosen to take and does

not intend to use illegal drugs in the future. He realizes the negative impact drug usage can have on one's life and realizes usage is inappropriate.

In determining the security concern of his marijuana use, his four and one-half year period of abstinence must be balance against the prior 26 years of use to which the disqualifying and mitigating conditions (MC) are applied. In reviewing this drug usage, the majority of which occurred before 1995 when he returned to school full time, it is important to consider the Applicant's motivation for stopping. He stopped because he is older, he has changed his friends and associates, his work requires him to be drug free, he no longer associates with individuals who use marijuana, marijuana is no longer part of his social environment, and his life has changed. The Applicant is a productive member of his church and community.

Mitigating Condition (MC) 1<sup>(5)</sup> applies, because the most recent usage occurred more than four and one-half years ago. His intent not to use illegal drugs in the future, coupled with his candor about his drug use, and his demonstrated honesty, is sufficient for me to find his expressed intent never again to use marijuana makes MC 3<sup>(6)</sup> applicable. Accordingly, I find for the Applicant as to SOR subparagraph 1.a. and Guideline H (Drug Involvement) is resolved in favor of the Applicant.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline H (Drug Involvement): FOR THE APPLICANT

Subparagraph 1.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 the Applicant.

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**Claude R. Heiny**

**Administrative Judge**

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 as amended.
2. It was extremely rare for his wife to use marijuana. (tr. 50) When the Applicant was using, his wife preferred that he did not. Although not judgmental, his wife was happy when he stopped using marijuana.
3. DC1. Any drug abuse. (E2.A8.1.2.1.)
4. DC 2. Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution. (E2.A8.1.2.2.)
5. MC1. The drug involvement was not recent. (E2.A8.1.3.1.)
6. MC 3. A demonstrated intent not to abuse any drugs in the future. (E2.A8.1.3.3.)