

DATE: November 6, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-25285

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant is an unlawful user of marijuana, and fully intends to use the drug in the future. Clearance is denied.

STATEMENT OF THE CASE

On July 10, 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 the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on July 30, 2002.

Applicant elected to have this case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on September 16, 2002. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received her copy on September 26, 2002, and submitted nothing in reply. The case was received by the undersigned for resolution on November 1, 2002. The issue raised here is whether the Applicant's admitted continuing drug abuse militates against the granting of a security clearance.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, and the File of Relevant Material. The Applicant is 52 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant.

Guideline H - Drug Involvement

1.a.~1.g. The Applicant used marijuana, with varying frequency, from about 1969 to the present (Government Exhibit (GX) 5 at page 2). The Applicant, in part, describes her marijuana abuse in the following terms:

I first used marijuana in 1969 when a friend in high school gave me some. . . . I used it on a regular basis in the 1970s but cut back in the early 1980s to using it four or five times a year and no longer purchase it. I did use marijuana while in the Navy and while I held a security clearance . . . (*id*).

In 1977, the Applicant was charged with, and subsequently pled guilty to, Possession of Marijuana. She was in the Navy at the time of this conviction (*ibid*).

The Applicant also used cocaine, on a limited basis, in the 1980s. She describes her cocaine abuse as follows: "In the early 1980s, I experimented with the use of cocaine, I tried it once or twice and didn't like it so stopped" (GX 5 at page 2).

As to her future intentions as to the use of marijuana, the Applicant admits she intends to use it in the future, but "on an infrequent basis" (GX 2 at page 1). As the Applicant "is an unlawful user" of marijuana, pursuant to 10 U.S.C. 986, Guideline H is found against the Applicant.

Mitigation

I find the Applicant to be a very candid person.

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. The conditions should be followed in every case according to the pertinent criterion, however, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security clearance case presents its own unique facts and circumstances, it should not be assumed that these conditions exhaust the realm of human experience, or apply equally in every case. Conditions most pertinent to evaluation of this case are:

Drug Involvement

Conditions that could raise a security concern:

- a. Any drug abuse (drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction); [\(1\)](#)
- b. Illegal drug possession, including . . . purchase;

Conditions that could mitigate security concerns:

none

As set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.

- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future."

The Administrative Judge, however, 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.

The Government must make out its case under Guideline H (Drug Involvement), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and her ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

The improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places. If an applicant has demonstrated a lack of respect for the law in her private affairs, then there exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

CONCLUSIONS

The Applicant's occasional drug involvement extends over a period of about 33 years, from 1969 to the present. In her answer to the SOR, the Applicant not only admits her current marijuana abuse, but also admits that she fully intends to use it in the future. This being the case, she comes within the clear purview of 10 U.S.C 986 as "an unlawful user of . . . a controlled substance." Guideline H is therefore found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding her drug involvement. The Applicant has thus not met the mitigating conditions of Guideline H, and of Section E.2.2. of the Directive. Accordingly, she has not met her ultimate burden of persuasion under Guideline H.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.
- g. Against the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of 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 the Applicant.

Richard A. Cefola

Administrative Judge

1. Under the provisions of 10 U.S.C. 986 any person who is the unlawful user of . . . a controlled substance . . . may not be granted or have renewed their access to classified information.