

DATE: January 7, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-25435

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Robert Tuider, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 33-year-old employee of a defense contractor, used marijuana, cocaine, and LSD when he was 16 years old. After forsaking drugs, he completed high school and worked his way through college. In 1999, shortly before he was graduated, he used marijuana again on at least a couple of occasions and ingested ecstasy on approximately four occasions. Although he claims he stopped using drugs before he applied for his position with the defense contractor, Applicant admits that, as late as 2001, after starting his employment and having a drug screen, he inhaled "one breath" of marijuana at a social function. Applicant failed to establish that it is in the national interest to grant him a clearance. Clearance is denied.

STATEMENT OF THE CASE

On 16 August 2002, pursuant to Executive Order No. 10,865, *Safeguarding Classified Information Within Industry*, dated 20 February 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated 2 January 1992, as amended and modified, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant that 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 referral to an administrative judge to determine whether clearance should be denied or revoked.

Applicant answered the SOR in writing on 17 September 2002. The case was originally assigned to Administrative Judge John G. Metz Jr. on 18 October 2002, and a hearing was scheduled for 9 December 2002. Judge Metz recused himself and the case was transferred to me on 22 November 2002. At the request of Applicant, the hearing was delayed until 18 December 2002. On that date, I convened a hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government's case consisted of two exhibits. Applicant testified on his own behalf and submitted two exhibits. A transcript (Tr.) of the proceeding was received on 27 December 2002.

In the SOR, the Government alleged Applicant is disqualified from obtaining a security clearance because of drug involvement (Guideline H) based on his use of marijuana, cocaine, LSD, and ecstasy, and his sale of LSD.

FINDINGS OF FACT

Applicant is a 33-year-old employee of a defense contractor. Ex. 1. From November 1985 to June 1986, when he was 16 years old, Applicant was heavily involved in the use of illegal substances. He used marijuana, sometimes on a daily basis, cocaine on one or two occasions, and lysergic acid diethylamide (LSD) approximately five times. Ex. 2 at 2. He also bought LSD "in bulk so that it would be less expensive and "distribute[d] it to friends" at cost. Ex. 2 at 2-3. for a group of which he was a member. Each member of the group paid for his share of the cost of the LSD. Ans. Applicant failed his junior year of high school, in part because of the effects of his drug use He realized he was making a mistake with his life and so stopped using drugs. Tr. 16-17. He successfully completed high school and went to college part-time while he worked. After going through five majors and weathering some difficulties with alcohol, he was graduated from college in May 1999. Tr. 19

During a period extending from before his graduation from college (January 1999) to early 2001, Applicant resumed using drugs. He used marijuana during the entire period and experimented with ecstasy four times between January and June 1999. Tr. 4. He quit using drugs prior to thinking about working for his current employer. Tr. 12. He was screened for drug use by his current employer before being hired. The tests found no illegal substances in his system. Tr. 13. After starting his employment, Applicant inhaled "one breath" of marijuana at a social function. Ex. 2 at 8. At the hearing, Applicant provided a copy of a drug abuse screen for marijuana and benzodiazepines, on a urine specimen provided on 17 December 2002, that was negative for illegal drugs. *See* Ex. A.

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. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Order No. 12,968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

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." Exec. Order No. 10,865 § 2. *See* Exec. Order No. 12,968 § 3.1(b).

Initially, the Government must establish, by substantial 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. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at *6-8 (App. Bd. May 9, 2001). Once the Government has established by substantial evidence a *prima facie* case against the applicant, the applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec 19, 2002). "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* Exec. Order No. 12,968 § 3.1(b).

"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." Directive, ¶ E2.A8.1.1.1. Applicable conditions that could raise a security concern and may be disqualifying include the following:

- (1) Any use of illegal drugs. *See* Directive, ¶ E2.A8.1.2.1.
- (2) The illegal possession, sale, or distribution of drugs. Directive, ¶ E2.A8.1.2.2.

Possibly applicable conditions that could mitigate security concerns include the following:

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

CONCLUSIONS

Through the evidence of record, including Applicant's admissions, the Government established a *prima facie* case that Applicant used and distributed illegal drugs. Thus, the burden shifted to Applicant to refute or mitigate the disqualifying conditions and to demonstrate that it is in the national interest of the United States to grant him a security clearance.

Applicant claims that his initial bout with drugs was caused by peer pressure from friends during a time when he faced unresolved issues with the deaths of his father (1982), his brother (1979), and a friend (1986). Applicant was able to see the error of his ways, stop using illegal drugs, and turn his life around by completing his high school education, going to work, and working on his college degree. Applicant appears to have powerful mitigation for his initial period of illegal drug use—the drug use was not recent, Applicant was only 16 years old at the time, and Applicant apparently rehabilitated himself. However, it is difficult to give such mitigation much weight when, as an adult of 29, Applicant chose to use illegal drugs again.

Applicant's second bout with illegal drugs was not a momentary relapse. It lasted almost two years. Applicant explains this second period of use by blaming peer pressure and "a feeling that maybe I hadn't made the right decision [about not using drugs], that I was basing everything on feelings that I had when I was younger." Tr. 28. Applicant knew the part illegal drugs had played in his failing his junior year in high school. After overcoming peer pressure to put his life on the right track, he threw it all away because he was not sure he had made the right choice.

Applicant appears to be a bright, articulate, honest, and forthcoming individual. During his testimony, Applicant asserted that he stopped using drugs before thinking about moving to the defense contractor that currently employs him. Yet, he admitted in his 13 September 2001 sworn statement (Ex. 2) that, as late as 2001, after starting employment with his defense contractor, he inhaled "one breath" of marijuana at a social function. Ex. 2 at 8. Despite his protestations that he has seen the error of his ways and will not use illegal drugs again, Applicant failed to convince me that he has the resolve to avoid another return to illegal drugs. Applicant has not established that it is in the national interest to grant him a security clearance

FORMAL FINDINGS

Formal Findings as required by the Executive Order No. 10,865 § 3, ¶ 7 (*See* Directive, ¶ 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

Subparagraph 1.d.: Against Applicant

DECISION

In light of all 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 Applicant.

James A. Young

Administrative Judge