

DATE: December 31, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-25823

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN G. METZ, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

Kathryn A. Trowbridge, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's recreational abuse of marijuana from 1997 to April 2001 was not mitigated where Applicant used marijuana after applying for a clearance in April 2001. Applicant's falsification of his April 2001 clearance application suggests he cannot be relied upon to tell the truth if it conflicts with his personal interest. Clearance denied.

**STATEMENT OF THE CASE**

On 29 October 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<sup>(1)</sup> that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 12 December 2002, Applicant answered the SOR and requested an administrative decision on the record. Applicant did not respond to the Government's File of Relevant Material (FORM)--issued 15 July 2003; the record in this case closed 14 September 2003, the day the response was due at DOHA. The case was assigned to me on 25 September 2003, and I received the case the same day to decide if clearance should be granted, continued, denied or revoked.

**FINDINGS OF FACT**

Applicant admitted using marijuana about ten times between 1997 and April 2001 (paragraph 1), but denied having falsified his 24 April 2001 clearance application by failing to disclose his drug use (paragraph 2); accordingly, I incorporate the admissions as findings of fact.

Applicant--a 25-year-old employee of a defense contractor--seeks access to classified information. He has an undergraduate degree in business administration/ finance from a major U.S. university.

On 24 April 2001--a Tuesday--Applicant falsified a Security Clearance Application (SCA)(SF-86)(Item 4) when he answered "no" to a question asking him to disclose his use of illegal drugs in the last 7 years (or since the age of 16,

which in this case, covered the same period). In fact, he had used marijuana several times since entering college in 1996. In a sworn statement executed on 11 October 2001 (Item 6), Applicant variously claimed that he had omitted his drug use because 1) he had not used marijuana in about a year, (2) 2) had used marijuana on few occasions, 3) he was not addicted to marijuana, and 4) "it basically slipped my mind." He went on to assert that he was rushed through the clearance application and misunderstood the question.

Applicant's explanation lacks credibility. His self-serving statement demonstrates that he clearly understood the question, but rationalized a "no" answer. Further, examination of the rest of his clearance application reveals the attention to detail expected of a finance major--including detailed disclosure of a December 2000 arrest for criminal trespass and public drunkenness.

On 26 March 2002, Applicant--having changed employers--executed a second SCA (Item 5) in which he disclosed his marijuana abuse, including his most recent use in April or May 2001. Applicant's 12 December 2002 Answer contained a character reference from Applicant's supervisor (a family friend) attesting to Applicant's integrity and work ethic, and further indicating his acceptance of the explanation that Applicant proffered to him: that Applicant hurried through the 24 April 2001 SCA, realized his mistake and corrected it on the 26 March 2002 SCA, and then explained it to the DSS agent during the subject interview. However, Applicant had already been interviewed by DSS in October 2001.

### **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section 6.3. and in Enclosure 2 of the Directive. 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, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

### **DRUG INVOLVEMENT (GUIDELINE H)**

E2.A8.1.1. The Concern:

E2.A8.1.1.1. 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.A8.1.1.2. Drugs are defined as mood and behavior-altering substances.

E2.A8.1.1.2.1. Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants and hallucinogens); and

E2.A8.1.1.2.2. Inhalants and other similar substances,

E2.A8.1.1.3. Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

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

E2.A8.1.2.1. Any drug abuse (see above definition);

E2.A8.1.2.2. Illegal drug possession. . .

E2.A8.1.2.5. . . . Recent drug involvement, especially following the granting of a security clearance, or an expressed

intent not to discontinue use, will almost invariably result in an unfavorable determination.

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

E2.A8.1.3.1. The drug involvement was not recent;

E2.A8.1.3.2. The drug involvement was an isolated or aberrational event;

E2.A8.1.3.3. A demonstrated intent not to abuse any drugs in the future.

### **PERSONAL CONDUCT (GUIDELINE E)**

E2A5.1.1. The Concern: 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. . .

E2. A5.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, . . . in connection with a personnel security or trustworthiness determination;

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

### **Burden of Proof**

Initially, the government must prove controverted facts alleged in the SOR. If the government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. Where 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 or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the 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."

### **CONCLUSIONS**

The government has established its case under Guideline H, and the Applicant has not mitigated the conduct. Applicant was a recreational abuser of marijuana from approximately 1996 to some time in 2000. Although Applicant claimed to have been drug free for about a year when he completed his first SCA, he used marijuana within a week or so after being put on notice that drug use was against Government policy. This use is inconsistent with a stated intent to refrain from use in the future. His use was recent, in that it occurred during his background investigation, and neither isolated nor aberrational. Clearly, the illegality of the conduct did not affect his decision to use marijuana.

Although Applicant now vows to refrain from marijuana abuse having "matured," I find that vow neither credible nor sufficient to constitute a demonstrated intent to refrain from drug abuse in the future, particularly given the circumstances of Applicant's past use. Accordingly, I resolve Guideline H against Applicant.

The Government has established its case under Guideline E. Applicant knew he had used drugs within the last 7 years and deliberately withheld that information. More troubling, his inconsistent explanations about why he omitted the information and his unwillingness to be more forthright in acknowledging the reasons for his falsification suggests he lacks the candor required of those with access to classified information. The Government has an interest in examining all relevant and material adverse information about an Applicant before making a clearance decision. The Government relies on Applicants to truthfully disclose that adverse information. Further, an Applicant's willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the Government relies on in order to perform damage assessments and limit the compromise of classified information. Applicant's conduct suggests he is willing to put his personal needs and assessment of his privacy issues ahead of legitimate Government interests. I resolve Guideline E against Applicant.

### **FORMAL FINDINGS**

Paragraph 1. Guideline H: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph a: 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.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996 (Directive).

2. Although, if his sworn statement is to be believed, Applicant completed this application on 24 April, and then used marijuana either the weekend of 27-29 April or 4-6 May--his last acknowledged use of marijuana.