

DATE: February 26, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-02247

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant used various illegal substances from January of 1994 until his last usage November of 2001. His drug involvement is fairly recent; and as such, is of current security significance. Clearance is denied.

On August 29, 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 September 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 aterial (FORM) on November 24, 2002. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received his copy on December 5, 2002, and Applicant's reply was received on January 7, 2003. The case was received by the undersigned for resolution on January 14, 2003. The issue raised here is whether the Applicant's admitted drug involvement 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, the File of Relevant Material and Applicant's Response. The Applicant is 26 years of age, and is employed as a Software Engineer by a defense contractor who seeks a security clearance on behalf of the Applicant.

Guideline H - Drug Involvement

1.a.~1.e. The Applicant used various illegal substances, with varying frequency, from about January of 1994 until his last usage in November of 2001 (Government Exhibit (GX) 4 at pages 9~10, and GX 5 at page 1). The Applicant describes his illegal drug usage in the following terms:

I used **cocaine** approximately three times in October 2000; **opium** five times from Jan 97 to Jan 98; **LSD** two times from May 1995 to January 1997; **hashish** two to ten times from January 1995 to January 1999; and **marijuana** several times from January 1994 to November 2001, while I was in high school and college (GX 5 at page 1, emphasis supplied).

Mitigation

In his sworn statement, the Applicant avers that he intends no future drug involvement (EX 5 at page 2), and in his Response to the FORM he claims to be a changed person (Response at page 1). His uncle, who "retired from the U.S. Secret Service," thinks highly of the Applicant (Response at pages 3~4).

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);
- b. Illegal drug possession

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 his 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 his private affairs, there then exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

CONCLUSIONS

This 26 year old's occasional drug involvement extends over a period of about 8 years, from January of 1994 until November of 2001. This period covers most of the Applicant's adult life. He used a variety of illegal substances: Marijuana, Hashish, Cocaine, LSD and Opium. His last drug usage occurred only about 15 months ago. Although the Applicant now disavows any future drug abuse, it is too soon to say that his past abuse is not of present security significance. Guideline H is therefore found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his drug involvement. The Applicant has thus not met the mitigating conditions of Guideline H, and of Section E.2.2. of the Directive. Accordingly, he has not met his 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.

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

