

DATE: May 16, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-04976

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Catherine M. Engstrom, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 46-year-old aircraft painter, seeks a security clearance in connection with his defense contractor employment. Applicant used marijuana at various times between 1974 and 2000, and attended two drug and alcohol treatment programs after being identified by his employers' urinalysis testing program. However, Applicant failed to disclose this information on his security clearance application. Applicant failed to mitigate the disqualifying conditions exemplified by his conduct, and did not demonstrate it was in the national interest to grant him a clearance. Clearance is denied.

STATEMENT OF THE CASE

On October 15, 2002, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under Guideline H (Drug Involvement) and Guideline E (Personal Conduct) 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, and recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn statement, dated November 12, 2002, Applicant responded to the SOR allegations. He requested his case be decided on the written record in lieu of a hearing.

On March 5, 2003, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) [\(U\)](#) was provided to the Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Nothing in the record indicates that Applicant filed a response to the FORM by the April 24, 2003 due date. The case was assigned to me on May 8, 2003.

FINDINGS OF FACT

Applicant admitted the SOR allegations in subparagraphs 1.a., 1.b., and 1.c. He denied the allegations in subparagraph 2.a. and 2.b. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 46-year-old aircraft painter employed by a defense contractor. He seeks a security clearance to be able to continue his job. Applicant is married and has three children, who are not listed on his security clearance application. (Item 4 at 4; Item 5 at 5; Item 7 at 1; Item 8 at 5)

Applicant completed his security clearance application on June 9, 2000. On that application Applicant answered Question 27 that in the past 7 years he had not used any illicit drugs or substances, which included marijuana. He also answered Question 30 on that application that in the past 7 years his use of alcoholic beverages had not resulted in any alcohol-related treatment or counseling. Both answers were false because Applicant used marijuana in 1994 and now admits the use. Applicant also was diagnosed as and treated for alcohol dependence⁽²⁾ in 1995 by a recognized treatment program. Applicant was also diagnosed in 1995 with cannabis dependence⁽³⁾ at the same program. Applicant was discharged from the program he attended in 1995 for non-compliance with the program, to include non-attendance at the Level 2 sessions, and continued use of alcohol and marijuana. (Item 4 at 6-7; Item 9 at 5-6)

Applicant was identified in 1994 through his employer's drug testing program as a marijuana user. Applicant admits in his statement of July 2001 that he was sent to the diagnosis and treatment program in 1995. There is no evidence in the file showing Applicant voluntarily entered himself in the 1995 or 2000 diagnosis and treatment programs. The 1995 outpatient notes clearly show Applicant was diagnosed as chemically dependent for alcohol and cannabis. Applicant's evaluation was conducted by a program staff member. (Item 6 at 1-2; Item 9 at 1-5)

Applicant was diagnosed in September 2000 by a credentialed medical professional for cannabis abuse/cannabis dependence. This diagnosis in that remediation program occurred after Applicant was identified as using marijuana in a random urinalysis test conducted by his employer and was sent to the program. This marijuana use, which Applicant admits, occurred after Applicant signed his security clearance application in June 2000. (Item 3 at 1; Item 7 at 1-6; Item 8 at 1-5)

Applicant admits to the use of marijuana three times. He states he was very unlucky to be tested immediately after he used the marijuana on two of these occasions. He states he only used the marijuana in 1994 and 2000 when he was in a group of people or with friends who used it and offered it to him. The 1995 evaluation, however, at that time, states Applicant used four "hits" of marijuana. (Item 6 at 1; Item 9 at 1)

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 judgement, 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. Or. 12968, *Access to Classified Information* Section 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicted upon the applicant meeting the security guidelines contained in the Directive.

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. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of:

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation;
- (3) how recent and frequent the behavior was;
- (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 pertinent 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 (See Directive, Section E2.2.1. of Enclosure 2).

Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. See Directive Para E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance.: ISCR Case No. 01-20700 at 3 (App. Bd. 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 Para. 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 . Or. 12968 Section 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline H - Drug Involvement

(A) 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

(B) Drugs are defined as mood and behavior-altering substances and include:

(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

(2.2) Inhalants and other similar substances.

(C) Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

(D) Conditions that could raise a security concern and may be disqualifying include:

(1) Any drug abuse (see above definition).

(3) Diagnosis by a credentialed medical professional (e.g. physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence.

(4) Evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program.

(5) Failure to successfully complete a drug treatment program prescribed by a credentialed medical professional. Recent drug involvement, especially following the granting of a security clearance, or an expressed intent not to discontinue use, will discontinue use, will almost invariably result in an unfavorable determination.

(E) Conditions that could mitigate security concerns include:

None

Guideline E - Personal Conduct:

(A) 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. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

Refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personal security or trustworthiness determination.

(B) Conditions that could raise a security concern and may be disqualifying also include:

(1)The deliberate omission, concealment, falsification or misrepresentation of relevant and material facts from any personnel security questionnaire, personal history statement or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(5) A pattern of dishonesty;

(C) Conditions that could mitigate security concerns include:

None

Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, I can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. Likewise, I have attempted to avoid drawing any inferences that are based on mere speculation or conjecture.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to each allegation set forth in the SOR:

With respect to Guideline H, the Government established its case. The SOR alleges Applicant used marijuana in 1974, 1994, and 2000. Applicant was treated in 1995 and 2000, but even with the diagnosis of cannabis abuse, Applicant does not seem to take it to heart. I do not think that the only two times Applicant used marijuana, that his employers happened to test him for possible drug use and find it. The odds of that happening are too slim to be realistic. There was no evidence that Applicant did anything between 1995 and 2000, or even today, to address and remedy fully the cannabis abuse diagnosis from the 1995 treatment program. Therefore, the problem likely remains unresolved. Under Guideline H, an applicant's illegal involvement with drugs raises questions regarding his willingness to protect classified information. I conclude Disqualifying Conditions (DC) 1, 3, 4, and 5 apply here. A security concern may exist if an applicant uses or purchases illegal drugs such as marijuana.

Next, I turn to the Mitigating Conditions (MC) set forth in the Directive to determine if any apply here. After evaluating all of the evidence, I conclude none are applicable in this case. The facts of this case show Applicant's use of marijuana is recent and has actually continued over 30 years or so intermittently, at least. His three or four instances of use are, therefore, not isolated nor aberrational events. There is no demonstrated intent not to abuse drugs in the future. Actually, Applicant's use after he completed the security clearance application, coupled with the diagnosis in 1995 which has not been changed, is very persuasive to me that Applicant does have the intent or the will power to stop using marijuana in the future. Finally, Applicant did not satisfactorily complete the prescribed drug program in 1995, and in 2001 reported a relapse and use of marijuana. I do not find his protestations credible and do not find his arguments persuasive on the issue of further drug use. Accordingly, allegations 1.a., 1.b., and 1.c. of the SOR are concluded against Applicant.

With respect to Guideline E, I conclude the Government proved its case as it sets forth in subparagraph 2.a. and 2.b. that Applicant deliberately failed to disclose his drug involvement on the personnel security questionnaire submitted in June 2000. Under Guideline E 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. A security concern may exist when an applicant deliberately omits, conceals, or falsifies relevant and material facts from his personnel security questionnaire or deliberately provides false or misleading information concerning relevant and material matters to an investigator in connection a personnel security determination. Through Applicant's admissions, the Government established a prima facie case that Applicant deliberately falsified his security clearance application in 2000.

Applicant lied about his use of marijuana in the time period requested in Question 27, which was back to 1993. He used marijuana in 1994. But what is more troublesome is that Applicant used marijuana after he completed the application in June 2000. Applicant also lied by failing to answer Question 30 accurately and truthfully. He should have disclosed his alcohol and drug treatment in 1995, but he did not. His excuse for these two falsifications was that he was in a rush to complete the form. It is not reasonable to expect that someone would forget to include these significant facts in response to the two questions.

Therefore, I find Applicant deliberately falsified the answers to Questions 27 and 30 on the security clearance application. I conclude there is a pattern of deception here by Applicant which does not make it clearly consistent with the national interest to issue Applicant a security clearance. The DC 2 and 5 apply here. Examining and considering the MCs which might apply, I can find none. Applicant continues to this day to obfuscate and refuse to acknowledge the truth, to such a fine degree of even attempting to assert in his Answer that he went voluntarily to the 1995 treatment, but in his July 2001 statement admitting he was "sent". I do not find Applicant credible on these issues and conclude against him. Accordingly, allegations 2.a. and 2.b. of the SOR are concluded against Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline H: Against Applicant

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Paragraph 2 Guideline E: Against Applicant

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

DECISION

In light of all the circumstances and facts 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.

Philip S. Howe

Administrative Judge

1. The Government submitted nine items in support of the SOR.
2. See DSM-IV-TR, Axis I, 303.90, in Item 9 at 6
3. DSM-IV-TR, Axis I, 305.20, in Item 7 at 5. Item 7 at 1 contains the Axis I code 305.60 which refers to cocaine abuse, but that entry is not supported by any other comment in Item 7 and I give it no weight. I only give weight to the cannabis dependence diagnosis.