

DATE: August 12, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-05361

## **DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Melvin A. Howry, Esquire, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

The Applicant used marijuana on a daily basis from 1972~1978. In 1979, he started to use both LSD and hallucinogenic mushrooms. He used these drugs, 3~4 times each, until their last usage in 1984. He was subsequently granted a security clearance in 1986. In 1979, the Applicant also started to use cocaine. He used cocaine on a nearly monthly basis until his last usage in 1991. After 1979, the Applicant also continued to use marijuana on a less frequent basis. From 1994 until his last usage in April of 2001, the Applicant used marijuana on an annual basis. His last drug abuse was more than two years ago, and he intends no future abuse. Mitigation is shown. Clearance is granted.

### **STATEMENT OF THE CASE**

On February 14, 2003, 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 the 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 or about March 20, 2003.

The case was received by the undersigned on May 23, 2003. A notice of hearing was issued on June 25, 2003, and the case was heard on July 9, 2003. The Government submitted documentary evidence. Testimony was taken from the Applicant, who submitted documentary evidence, and called one witness to testify on his behalf. The transcript was received on July 17, 2003. The issue raised here is whether the Applicant's admitted past drug involvement militates against the granting of a security clearance. [The Applicant admits the underlying factual basis of the allegations, but denies any future drug abuse.]

### **FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 46 years of age, has a master's degree in electrical engineering, and is employed by a defense contractor that seeks a security clearance on behalf of the Applicant. 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.

### Guideline H - Drug Involvement

1.a.~1.i. The Applicant used marijuana on a daily basis from 1972~1978 (Transcript (TR) at page 25 line 12 to page 26 line 24, at page 34 line 21 to page 35 line 8, and at page 36 lines 5~10, *see also* TR at page 45 line 2 to page 52 line 6). In 1979, he started to use both LSD and hallucinogenic mushrooms (TR at page 29 line 2 to page 30 line 6, *see also* TR at page 45 line 2 to page 52 line 6). He used these drugs, 3~4 times each, until his last usage of these two drugs in 1984 (*id*). He was subsequently granted a security clearance in 1986 (Government Exhibit (GX) 2 at page 4). In 1979, the Applicant also started to use cocaine (TR at page 28 lines 13~21, at page 31 line 15 to page 33 line 3, and at page 54 line 12 to page 55 line 6, *see also* TR at page 45 line 2 to page 52 line 6). He purchased the drug for his own use until about 1984, and he used cocaine on a nearly monthly basis until his last usage in 1991 (*id*). After 1979, the Applicant also continued to use marijuana on a less frequent basis (TR at page 25 line 12 to page 26 line 24, at page 34 line 21 to page 35 line 8, and at page 36 lines 5~10, *see also* TR at page 45 line 2 to page 52 line 6). He last purchased the drug in 1991; and from 1994 until his last usage in April of 2001, the Applicant only used marijuana on an annual basis (*id*). His last drug abuse was more than two years ago, and he intends no future abuse (TR at page 24 lines 12~21).

The Applicant avers credibly that he has no intention of using any illegal drugs in the future (*id*). He avers that his "life had changed" in 2001. He testified, in part, as follows:

. . . 2001 was when my wife's kidneys failed. I was trying to move to . . . [a named U.S. city] and get a new job there. . . . [Y]ou find there is no room for that [drug involvement] in your life anymore and it is just too much to risk. And I can't afford to do things whether they be - - because even the fact of the security aspect of it - - or illegal, whatever. I just - - the risk of jeopardizing my family an ability to earn a living, I think was one factor that kind of - - and you just change. That's not you anymore (TR at page 51 lines 4~16).

The Applicant's occasional marijuana use, occurring during the last seven years of his drug involvement ending in 2001, does not bring him within the purview of 10 U.S.C. Section 986, as he is no longer a user and has not used in more than two years.

### Mitigation

Two of the Applicant's co-workers speaks highly of the Applicant and aver that he is trustworthy (TR at page 58 line 22 to page 64 line 22, and Applicant's Exhibit (AppX) B at page 1, *see also* AppX A). His spouse also speaks credibly to the Applicant's commitment to no future drug abuse (AppX B at page 2, *see also* TR at page 33 lines 9~16).

## **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 . . . purchase . . .

Conditions that could mitigate security concerns:

- a. The drug involvement was not recent;
- c. A demonstrated intent not to abuse any drugs in the future.

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

The Applicant used a number of drugs spanning a period of nearly 30 years. This past drug abuse is of concern to the Government, but the gravamen of the Government's case is his most recent abuse, that of marijuana. [His other drug involvement having occurred more than a decade ago.] From 1991 until his last usage in April of 2001, the Applicant's only drug involvement was with marijuana, and then only on an occasional basis. His last occasional use of the drug occurred more than two years ago; and, in light of his greatly diminished drug involvement since 1991, is not recent, thus satisfying the first mitigating condition under Drug Involvement. He has also avers credibly that since 1991, his family life has changed significantly; and as such, drug involvement has no place in his life anymore. Furthermore, his testimony is corroborated by his spouse and by two co-workers, that he intends no future drug involvement. This satisfies the third mitigating condition. I therefore find that the Applicant's past drug abuse is not of present security

significance. Guideline H is therefore found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his drug involvement. The Applicant has thus met the mitigating conditions of Guideline H, and of Section E.2.2. of the Directive. Accordingly, he has 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: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.
- f. For the Applicant.
- g. For the Applicant.
- h. For the Applicant.
- i. For 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 clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge