

DATE: June 16, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-05756

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 four times during his life, three times after being granted a security clearance in 1987. He last used marijuana in September of 2000, more than 30 months ago, and he intends no future use of marijuana. Clearance is granted.

STATEMENT OF THE CASE

On January 24, 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 February 24, 2003.

The case was received by the undersigned on March 31, 2003. A notice of hearing was issued on April 15, 2003, and the case was heard on May 12, 2003. The Government submitted documentary evidence. Testimony was taken from the Applicant. The transcript was received on May 28, 2003. The issues raised here are whether the Applicant's past marijuana use militates against the granting of a security clearance. [The Applicant admits the allegations in part, 1.a. and 1.c., and denies them in part, 1.b. and 1.d.].

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 40 years of age, has a bachelor's degree in aeronautical engineering, and is employed by a defense contractor who 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.d. The Applicant used marijuana once when he was 17 years of age (Transcript (TR), at page 18 line 14 to page 20 line 18, and at page 26 line 23 to page 27 line 4). He was granted a security clearance in 1987, but used marijuana three more times during the time frame July~September of 2000 (*id*, and Government Exhibit (GX) 4). The Applicant describes his summer of 2000 usage in the following terms:

I was at a party, and a friend encouraged me to use it, and I took one puff off of a marijuana cigarette. That was the extent of the at that one September incident. . . . And similar incidences occurred where I took one puff. Two other incidences occurred where I took one puff off of a marijuana cigarette (TR at page 22 lines 3~10).

The Applicant avers credibly that he has no intention of using marijuana in the future (TR at page 16 line 25 to page 17 line 6, at page 24 lines 1~5, and at page 27 line 25 to page 28 line 2). The Applicant's occasional, past marijuana use does not bring him within the purview of 10 U.S.C. Section 986.

Mitigation

The Applicant testified credibly that he now understands the incompatibility of drug abuse and of holding a security clearance (*id*).

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

Condition 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);

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 marijuana on four occasions during his entire lifetime. His last occasional abuse of the drug occurred more than 30 months ago; and as such, is not recent, thus satisfying the first mitigating condition under Drug Involvement. He has also averred, credibly, that he intends no future drug involvement, which also satisfies the third mitigating condition. I therefore find that the Applicant's occasional, past marijuana 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.

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