

DATE: May 10, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-05970

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 25-year-old employee of a defense contractor. He admitted to smoking marijuana from 1994 to 2001, but only admitted marijuana use up to 1998 on his security clearance application in 2000. When questioned by an investigator in 2001, he made the fullest disclosure of his marijuana use. But the interrogatories sent to him in 2003 resulted again in disclosure only until 1998. Serious concerns exist as to Applicant's veracity, and his explanations now do not mitigate the disqualifying conditions of Guidelines E Personal Conduct. Applicant did not mitigate the Drug Involvement Guideline H security concerns. Clearance is denied.

STATEMENT OF THE CASE

On July 22, 2003, 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

Applicant submitted a signed and sworn Answer, dated and notarized on August 25, 2003. He denied the applicability of the specific guidelines to himself, and denied the specific allegations in Subparagraph 2.a. concerning falsification of his answer to Question 27 on his security clearance application. He admitted the allegations contained in Subparagraph 1.a. and 2.b. of the SOR. Applicant requested his case be decided on the written record in lieu of a hearing.

On November 25, 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. He was given the opportunity to file objections and submit

material in refutation, extenuation, or mitigation. Applicant did not file a response to the FORM by the January 8, 2004, due date. The case was assigned to me on January 23, 2004.

FINDINGS OF FACT

Applicant admitted Subparagraphs 1.a. and 2.b. of the SOR allegations. 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 that evidence, I make the following additional findings of fact:

Applicant is 25 years old and works as an engineer for a defense contractor. (Item 4 at 1, 2)

Applicant admits using marijuana three or four times weekly from January 1994 to January 1998, and then monthly until January 2001. Applicant asserts he has not used marijuana since January 2001 and does not intend to use it in the future, but his varying accounts of his marijuana use diminish his veracity on this point. Applicant found the use of marijuana cut into the time he needed for school work. That fact plus his arrest for possession of marijuana in October 1995 made him consider stopping the use of marijuana, and eventually he did. He said he also ceased to associate with persons who used marijuana. The six years Applicant took to consider stopping the use of marijuana also diminishes his veracity on this issue. (Item 5 at 1; Item 6 at 2, 4, and 6; Items 7 and 8)

Applicant answered Question 27 "Yes" on his security clearance application (SCA) by admitting "occasional" use of marijuana from January 1994 until January 1998. That admission pertained to Applicant's illegal use of drugs in the past seven years from December 2000, when Applicant signed that application. In fact, Applicant had used marijuana several times weekly from January 1994 to January 1998, and monthly thereafter until January 2001. Applicant admitted this marijuana use during interviews with Defense Security Service investigators in August 2001. Applicant should have admitted his use of marijuana up to the time in December 2000 he completed the SCA. Yet Applicant only admits to use of marijuana until 1998 on the interrogatories, specifically Question 1 and 2, submitted to him to him and which he signed in February 2003. (Item 4 at 7; Item 5 at 1; Item 6 at 3)

Applicant denies current use of marijuana and other controlled substances. He submitted a drug test analysis result from August 21, 2003. That drug test shows negative on that date for marijuana and cocaine. (Item 2 at 1 and 3)

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 he 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:

(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) 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);

(2) Illegal drug possession, including purchase.

(E) Conditions that could mitigate security concerns include:

(1) The drug involvement was not recent;

(3) A demonstrated intent not to abuse any drugs in the future.

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:

(2) 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;

(4) Personal conduct or concealment of information that increases an individual's

vulnerability to coercion, exploitation or duress, such as engaging in activities

which, if known, may affect the person's personal, professional, or community

standing or render the person susceptible to blackmail;

(5) A pattern of dishonesty;

(C) Conditions that could mitigate security concerns include:

(5) The individual has taken positive steps to significantly reduce or eliminate

vulnerability to coercion, exploitation, or duress.

CONCLUSIONS

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

Guideline H - Drug Involvement: I conclude the Government established its case by the record evidence and the admissions of the Applicant. Applicant admitted his marijuana use from 1994 to 2001. Disqualifying Conditions (DC) 1 (any drug use) and DC 2 (illegal drug possession) apply. He possessed it so he could use it.

The Mitigating Conditions (MC) 1 (the drug involvement was not recent) and MC 3 (a demonstrated intent not to abuse any drugs in the future) might apply here if Applicant were telling the truth about his marijuana use. However, his varying answers on the SCA, the interrogatories, and to the investigator make me question seriously his veracity. Which explanation is to be believed as to his marijuana use? The drug test result he submitted was not done on a random basis, but at his convenience. I place little weight on it for the purposes of this proceeding. Because I cannot believe his dates he says he stopped using marijuana, I cannot find the drug involvement was not recent, and do not apply MC 1 for that reason. I also cannot believe his statement he will not abuse any drugs in the future because of the changing answers to provided to three government inquiries on that issue, and the six years it took him to give up using marijuana, so he states, show he had difficulty and a reluctance to cease the use of controlled substances. Therefore, I cannot apply MC 3 because I do not believe Applicant's purported intention. Therefore, I find against Applicant on Guideline H.

Guideline E - Personal Conduct: Applicant did not make the required and appropriate full disclosure in answer to Question 27 of his December 2000 SCA. He revealed marijuana use from January 1994 to January 1998. The term "occasional" is not defined, and may mean one thing to Applicant and another thing to a governmental decision maker. The government has the burden of defining such terms if they are important to it. I give the benefit of the imprecision of the term to the Applicant and give him credit for his disclosure. But he did not make a full enough disclosure. The only rational explanation is that he attempted to minimize his usage by stopping the disclosure at the 1998 date. Then, later, after his full admissions to the investigator in August 2001, Applicant reverts to his prior lack of full disclosure and only admits to marijuana use until 1998 on the February 2003 interrogatories the government sent to him.

Under this guideline, a security concern may exist if an applicant is shown to be untrustworthy, dishonest, lacking in candor, dishonest in his disclosures, and failing to comply with requirements of disclosure. Applicant's disclosures are inconsistent. DC 2 (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), DC 4 (personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail), and DC 5 (a pattern of dishonesty) apply.

Only MC 5 (the individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress) applies here. Applicant has disassociated himself from the environment and people which fostered his use of marijuana. He has a job and a home. But he continues to make incomplete and varying disclosures about his drug use which raise questions about his true period of use of marijuana, and undermine his credibility. Therefore, the finding is against the 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: For the Applicant

Subparagraph 1.a.: For the 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. Clearance is denied.

Philip S. Howe

Administrative Judge

1. The Government submitted eight items in support of its case.