

DATE: August 29, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-06607

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant's history of illegal drug abuse from 1996 until at least January 2002, does not bring him within the purview of 10 U.S.C. Section 986, as he is no longer a drug user and has not used since 2002. His drug use, however, has not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

**STATEMENT OF THE CASE**

On March 20, 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, as amended, 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 clearance should be denied or revoked.

The Applicant responded to the SOR in writing on April 14, 2003, and elected to have the case determined on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on July 8, 2003. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM in July 14, 2003, and he submitted no response.

The case was transferred to the undersigned for resolution on August 18, 2003.

**FINDINGS OF FACT**

The Applicant is 27 years old, unmarried, and holds a Bachelor's Degree in History. He is employed as a Student Technician for a Defense contractor. He is applying for a security clearance in connection with his employment in the defense industry.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and criterion in the SOR:

Paragraph 1 (Guideline H - Drug Involvement). The Government alleges that the Applicant is ineligible for clearance because he has abused illegal substances.

The Applicant began using marijuana in July 1996, with a friend from high school. He enjoyed using it because he found it relaxing. He continued to use marijuana over the years on a regular basis with friends and roommates in college. The Applicant estimates that in total, he has used marijuana about 210 times from July 1996 until January 2002. He states that he last used marijuana in January 2002. At the time the Applicant initially provided his sworn statement to the Defense Security Service (DSS) he indicated that he occasionally used marijuana for relaxation, once every 2-3 months. (*See, Government Exhibit 5*). Despite this, the Applicant claims that he has never been physically, mentally or psychologically addicted to marijuana. An addendum was added to the Applicant's sworn statement indicating that after speaking with the DSS Special Agent, the Applicant decided to cease using all drugs and operate as if he were holding a security clearance. (*See, Government Exhibit 5*).

The Applicant also used a number of other illegal drugs on a sporadic basis since 1996. He used ecstasy at least four times from April 1998 to at least October 2000, opium at least five times from August 1999 to at least March 2000, LSD at least four times from August 1998 to at least February 2000, and mushrooms at least six times from July 1996 to at least August 25, 1999. (*See, Government Exhibit 5*).

#### Mitigation.

It appears that the Applicant has recently, as of January 2002, decided to discontinue his use of illegal drugs.

### **POLICIES**

Enclosure 2 of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

#### Guideline H (Drug Involvement)

##### Conditions that could raise a security concern:

1. any drug abuse;
2. illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution.

##### Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes

- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

## CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in repeated instances of illegal drug use which demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by evidence that the Applicant has abused marijuana, and other illegal drugs (Guideline H). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, there is a nexus or connection with his security clearance eligibility.

Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

Drug abuse precludes an individual from properly safeguarding 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. This is so because of the obvious potential for an unauthorized disclosure of defense secrets resulting from neglect or misadventure caused by the abuse of illegal drugs. 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.

The Applicant's regular use of marijuana combined with his sporadic use of other dangerous drugs, including ecstasy, opium, LSD and mushrooms extended beyond his high school years into his adult life, for a six year period, from July 1996 to at least January 2002. His repeated and regular pattern of marijuana use cannot simply be attributed to experimentation or youthful indiscretion.

Although his marijuana use last occurred in January 2002, over a year and a half ago, the Applicant was only motivated to stop using marijuana when he was told by DSS that DoD prohibits its use and that his security clearance was in jeopardy. Over the past six years, the Applicant simply ignored the fact that the use of marijuana is illegal, and prohibited by state and federal law. Despite the fact that he states that he has ceased all illegal drug use, given his extensive history of illegal drug abuse, it is impossible at this point to have confidence in the Applicant's claim of rehabilitation. If he has in fact ceased his use of marijuana, and started rehabilitation, it is too early in his rehabilitation to determine that he will not return to his old habits, and again succumb to peer pressure, as in the past, or that he will follow through with his stated intentions. At this time, the Applicant does not meet the eligibility requirements for access to classified information. Accordingly, Guideline H (Drug Involvement), is found against the Applicant.

The Applicant's regular use of marijuana ended in January 2002, which does not bring him within the purview of 10 U.S.C. Section 986, as he is no longer a drug user and has not used in over a year and a half. Under the circumstances, however, the Applicant cannot be deemed to be sufficiently rehabilitated in the area of his Drug Involvement to warrant granting his security clearance request.

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

### **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

Subpara. 1.c.: Against the Applicant.

Subpara. 1.d.: Against the Applicant.

Subpara. 1.e.: Against the Applicant.

Subpara. 1.f.: Against the Applicant.

Subpara. 1.g.: For the Applicant.

### **DECISION**

In light of all 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.

**DARLENE LOKEY ANDERSON**

Administrative Judge