

DATE: May 12, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-06810

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 27-year-old employee of a government contractor who has used marijuana 20 times since college in 1995 and continued to use until 2001. She now does not use and has no intention to resume use. Her fiancé and now husband used marijuana until February 2002 and does not presently use. Applicant apologized for past conduct and gave cogent family reasons for her intent not to use in the future. Clearance is granted.

STATEMENT OF THE CASE

On December 13, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Information Within Industry*, 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 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 Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated December 27, 2002, Applicant responded to the allegations set forth in the SOR, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on April 7, 2003. A complete copy of the File of Relevant Material (FORM), consisting of seven documents, was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She submitted an additional statement on April 18, 2003. The case was assigned to, and received by, this Administrative Judge on April 30, 2003.

FINDINGS OF FACT

Applicant used marijuana 20 times when she was in college in 1995 until 2001 at which time she stopped and does not intend to resume. She has recently married and intends to have children and feels a responsibility to do nothing that

might adversely affect the health of her child.

Applicant lived with her fiancé before marriage and he used marijuana in their home until February 2002.

Applicant does not believe there is any potential to be pressured or coerced because of her past behavior that might jeopardize national security.

Applicant apologized for her past conduct and noted that she had learned from her mistakes and hopes to move forward with her life with her husband and expected child.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (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 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the government must establish, by something less than a preponderance of the 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. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "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, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

CONCLUSIONS

The government has cited Disqualifying Condition (DC) 1 under Guideline H in the SOR concerning drug involvement as relevant to the proposed denial of a security clearance for the Applicant. Drug involvement is always a security concern because it raises questions about a person's willingness or ability to protect classified information. Any drug abuse is a condition that may be disqualifying. E2.A8.1.1.3 provides the following definition: "Drug abuse is the illegal use of a drug" The applicable Mitigating Condition (MC) 2 is that there is "A demonstrated intent not to abuse any drugs in the future."

Applicant presents a convincing case that she has discontinued the use of marijuana since 2001 and does not intend to use it again. She gives cogent and believable reasons for this commitment while acknowledging prior use. Her prior use 20 times over a period of six years is relatively infrequent.

The government has presented an additional argument concerning Applicant's fiancé with whom she lived before their marriage in 2002. Applicant stated in her answer to the SOR that he used marijuana in the home until 2001. In her statement to an investigator on January 2, 2002, she stated that he was still a user. In her statement of January 15, 2003, she said that he had not used marijuana since 2001. In her April 18, 2003 response to the FORM she apologized for the error and stated that he ceased using marijuana in February, 2002.

In any event he no longer is a user and thus she should not be denied a clearance based on the past conduct of her

husband. Guideline H is the only cited guideline and it is only under Guideline E ¶ E2.A5.1.2.6 that "Association with persons involved in criminal activity" is a disqualifying condition. In any event, there is no current involvement with drugs by Applicant's husband.

For the reasons stated, I conclude that the Applicant is not eligible for access to classified information.

FORMAL FINDINGS

Formal Findings as required by the Directive ¶ E3.1.25 are as follows:

Paragraph 1 Guideline H: For Applicant

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

DECISION

After full consideration of all the facts and documents presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Charles D. Ablard

Administrative Judge