

DATE: June 8, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-07965

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Jason Perry, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

On his security clearance application (SCA), Applicant admitted using marijuana once. In a December 2001 signed, sworn statement, Applicant also admitted using marijuana once after submitting his SCA and once after being granted an interim clearance. After two additional interviews, on 29 April 2003, Applicant submitted another signed, sworn statement about his drug use. The following day, he voluntarily submitted another signed, sworn statement in which he admitted deliberately omitting from the 29 April statement several other uses of marijuana while he held an interim clearance. Clearance is denied.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 6 October 2003, DOHA issued a Statement of Reasons<sup>(1)</sup> (SOR) detailing the basis for its decision-security concerns raised under Guideline H (Drug Involvement) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on 7 November 2003 and requested a hearing before an administrative judge. On 23 February 2004, he withdrew his request for a hearing and elected to have the case decided on the written record. Department Counsel submitted the Government's written case on 25 March 2004. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on 29 March 2004. He did not submit any response to the FORM within the 30-day time period allowed. The case was assigned to me on 10 May 2004.

**FINDINGS OF FACT**

Applicant is a 26-year-old software engineer for a defense contractor. Item 4 at 1, 3. On 11 August 2000, Applicant completed a security clearance application (SCA) in which he admitted using marijuana one time on about 1 March 1999. Apparently as a result of his admission to using marijuana, Applicant was interviewed by a Defense Security

Service (DSS) agent. In a signed, sworn statement dated 13 December 2001, Applicant admitted using marijuana three times, once in 1999 and twice in 2000. One of the uses in 2000 may have been while he held an interim security clearance. Applicant swore not to "use marijuana again because of health concerns, the desire to have a security clearance, and a distaste for breaking the law." Item 6 at 1.

Applicant was interviewed again on 24 and 29 April 2003 about his illegal drug use. Item 7 at 1. In a signed, sworn statement Applicant made on 29 April 2003, reiterated that he had used marijuana three times. The last two occasions were after he had filled out his SCA and the last occasion was after he possessed an interim secret clearance. *Id.* at 2-3.

The following morning, Applicant called the DSS agent who took the 29 April 2003 statement because he wanted to add information regarding other occasions on which he illegally used marijuana. On 30 April 2003, Applicant submitted another signed, sworn statement in which he admitted smoking marijuana three to four times on a road trip with several friends during the summer of 2002. Applicant "intentionally did not disclose this incident during [his 29 April] interview because [he] panicked . . . [He] was scared." Item 8 at 2. Applicant declined to reveal the identities of the friends with whom he used marijuana because he did not want to get them in trouble. *Id.* at 1-2.

### 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 judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

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. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

### CONCLUSIONS

#### **Guideline H--Drug Involvement**

In the SOR, DOHA alleged Applicant used marijuana at least seven times, including three to four times during the summer of 2002 (¶ 1.a.) and used marijuana four or five times while possessing an interim secret clearance (¶ 1.b.). The improper or illegal involvement with drugs raises questions regarding an applicant'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. Directive ¶ E2.A8.1.1.

The Government established by substantial evidence and Applicant's admissions each of the allegations in SOR ¶ 1. Applicant abused drugs by illegally using marijuana. DC E2.A8.1.2.1. In all three of his statements, Applicant expressed an intent not to use drugs again in the future. I find his statement unpersuasive in light of his continued use of marijuana after his 13 December 2001 statement that he would not use marijuana again. None of the mitigating conditions listed under the guideline apply to Applicant's case. I find against Applicant.

### **Guideline E--Personal Conduct**

In the SOR, DOHA alleged Applicant deliberately falsified material facts in a statement to a DSS agent by not disclosing his use of marijuana in the summer of 2002 (¶ 2.a.) and used marijuana on multiple occasions while possessing an interim secret clearance (¶ 2.b.). Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government established by substantial evidence and Applicant's admissions each of the allegations in SOR ¶ 2. Applicant deliberately provided false information concerning relevant and material matters--his use of marijuana--to an investigator in connection with a personal security determination. DC E2.A5.1.2.3. Such concealment of information increased Applicant's vulnerability to coercion and exploitation and rendered him susceptible to blackmail (DC E2.A5.1.2.4.). Applicant took positive steps to eliminate his vulnerability to coercion, exploitation, or duress by coming forward and voluntarily admitting his false statements. MC E2.A5.1.3.5. But his confession comes too late. His stated reasons for falsifying his statements demonstrate that he is willing to place his own interests above the needs of the government. After carefully weighing all of the evidence, as well as the disqualifying and mitigating conditions, I find against Applicant on ¶ 2.a.

Applicant's use of marijuana after being granted an interim security clearance is reliable, unfavorable information that raises concerns about applicant's judgment, trustworthiness, reliability, and willingness to comply with rules and regulations. DC E2.A5.1.2.1. None of the listed mitigating conditions apply to Applicant's case. I find against Applicant on ¶ 2.b.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline H: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

### **DECISION**

In light of all of 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 Applicant. Clearance is denied.

**James A. Young**

**Administrative Judge**

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).