

DATE: July 9, 2003

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-08297

## **DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Erin C. Hogan, Esq., Deputy Chief Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Thirty-six-year-old employee of a defense contractor used marijuana before and after she completed her security clearance application (SCA) and failed to disclose the full extent of her marijuana use on her SCA. Applicant failed to sufficiently mitigate drug involvement, personal conduct, and criminal conduct security concerns. Clearance is denied.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. In accordance with the applicable Executive Order<sup>(1)</sup> and Department of Defense Directive,<sup>(2)</sup> DOHA issued a Statement of Reasons (SOR) on 12 February 2003 detailing why a clearance was not granted and recommending Applicant's case be referred to an administrative judge to determine whether the clearance should be denied/revoked. In the SOR, DOHA alleged Applicant failed to meet the drug involvement (Guideline H), personal conduct (Guideline E), and criminal conduct (Guideline J) personnel security guidelines of the Directive.

Applicant answered the SOR in writing by admitting to the allegations contained in the SOR and electing to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on 24 April 2003. A complete copy of the file of relevant material (FORM) was provided to Applicant, and she was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on 30 April 2003 and responded on 13 May 2003. The case was assigned to me on 30 June 2003.

### **FINDINGS OF FACT**

Applicant is a 36-year-old employee of a defense contractor. On 30 June 2000, she signed an SCA, dated 1 July 2000. Item 5. Question 27 of the SCA asked if, in the previous seven years, Applicant had use illegal drugs, including marijuana. Applicant answered "yes" and explained that between January 1996 and June 1998 she had used marijuana 8

times.

Her answers to the questions in the SCA generated an interview with a Defense Security Service (DSS) agent. In a signed, sworn statement Applicant provided to the DSS agent, she admitted more extensive use of marijuana: January 1996 to May 1997, she used once every three to four weeks; May 1997 to May 1998, she used marijuana once every week; Summer 1999 to Spring of 2000, she used once every three months; and from Spring 2000 to 30 June 2002, she used approximately 6 times. Item 6 at 2.

Appellant admitted purposefully failing to disclose in her SCA some of her marijuana use because she "was concerned that sporadic usage of the past would be assumed to be steady, regular usage." Item 6 at 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. "[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, under Guideline H, Applicant used marijuana with varying frequency from approximately 1986 to at least November 2001 (¶ 1.a) and that such use disqualifies

her from getting a security clearance under 10 U.S.C. § 986 (¶ 1.b.). The illegal involvement with drugs raises questions regarding an applicant's willingness to protect classified information. Drug abuse may impair social or occupational functioning, increasing the risk of unauthorized disclosure of classified information. Directive ¶ E2.A8.1.1.1.

The Government established through Applicant's admissions that she abused drugs by using (DC 1) and possessing (DC

2) marijuana. In fact, she continued to use marijuana after completing the SCA. In her statement to the DSS agent Applicant swore she would stop using marijuana that day. Item 6 at 2. She had tried to stop using marijuana in the past, but had been unable to avoid the temptation of using it when it was available. In her 13 May 2003 Answer to the FORM, Applicant states that she sought counseling from a psychiatrist two years ago and quit using marijuana. Such demonstrated intent to stop abusing drugs is a mitigating condition. MC 3. As Applicant is no longer a user of marijuana, 10 U.S.C. § 986 does not apply.

Applicant continued to use marijuana after she knew, from completing the SCA, the Government was concerned about the use of illegal drugs. She has not sufficiently mitigated the security concern raised by her drug involvement. Finding is against Applicant.

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

In the SOR, DOHA alleged, under Guideline E, Applicant deliberately falsified her answer to question 27 of the SCA concerning the extent of her use of marijuana. Under Guideline E, 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. Directive ¶ E2.A5.1.1.

The Government established through its evidence and Applicant's admissions that she deliberately falsified her answer to question 27 of the SCA. DC 2. By admitting the full extent of her marijuana use, seeking help, and stopping her use of marijuana, Applicant has taken positive steps to significantly reduce or eliminate her vulnerability to exploitation. MC 5. Nevertheless, Applicant has not sufficiently mitigated the security concerns raised by her deliberate falsification. Finding is against Applicant.

### **Guideline J-Criminal Conduct**

In the SOR, DOHA alleged, under Guideline J, Applicant's deliberate falsification of her SCA was a violation of 18 U.S.C. § 1001. A history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1.

It is a criminal offense for any person within the jurisdiction of the executive branch of the U.S. to knowingly and willfully to make any materially false, fictitious, or fraudulent statement or representation. 18 U.S.C. § 1001. The extent of an applicant's use of illegal drugs is a material fact within the jurisdiction of the U.S. executive relevant to the granting of a security clearance. The statute carries penalties that include imprisonment for up to five years. Applicant's falsification of her SCA is a serious criminal offense. DC 2. The crime was an isolated incident. MC 2. Applicant has not sufficiently mitigated the security concerns raised by her criminal act. Finding is against Applicant.

## **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.: For Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph 3.a.: 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.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.