

DATE: September 8, 2003

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-27926

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Catherine M. Engstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a contractor with government agencies, had a history of marijuana use ending in 1996. On his application for security clearance in 1997 (SF 86) he omitted reference to this history. Other omissions alleged as to 1999 and 2001 SF 86's related to use of a mental health professional and reasons for leaving former employment. Applicant has changed his lifestyle since 1996 and is now a respected member of his community performing contracts with the government. His omissions from his application do not justify denial of a clearance. Clearance is granted.

HISTORY OF CASE

On January 17, 2003, 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 February 11, 2003, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on June 4, 2003. 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 in refutation, extenuation, or mitigation. He did so on July 14, 2003. The case was assigned to, and received by, this Administrative Judge on July 30, 2003.

FINDINGS OF FACT

Applicant admitted in part his use of marijuana and his failure to provide information on his security clearance

application regarding his drug use. He denied other allegations and the security implications of his admissions. Those admissions are incorporated herein as findings of fact. After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made.

Applicant received an Article 15 for possession of a marijuana cigarette in 1985 while in the Air Force.

Applicant has changed his lifestyle and is now a government contractor working on high tech matters for two U.S. government agencies. He is active in community sports activities for youth. He is highly recommended for his abilities and his character by the program director for whom he works who urged him to apply for a clearance.

Applicant failed to report his drug related activities on his 1997 SF 86 because he was embarrassed to do

He failed to list three visits to a marriage counselor on his 1997 SF 86 believing that such were not related to "mental health." On his 2001 SF 86 he admitted those visits. The SF 86 form had been modified by that time to distinguish between marital counseling and mental health counseling. He answered that he had received only marital counseling.

He is alleged to have omitted information about his departure from a former job in his 2001 SF 86. He answered that he did not leave because he was about to be fired, although he knew that information had come to the attention of management that might prompt his dismissal.

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. 10,865 § 2. *See* Executive Order No. 12,968 § 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. 12,968 § 3.1(b)

The applicable Guideline cited in the SOR concern the following Disqualifying Conditions (DC):

Drug Involvement Disqualifying Condition (DC) 3 under Guideline H raises an issue on current drug involvement following the grant of a security clearance. The Guideline also provides for Mitigating Conditions (MC) including the fact that the involvement was not recent (MC 1) and that there is a demonstrated intent not to abuse drugs in the future. (MC 3)

Personal Conduct (DC) under Guideline E raises an issue involving questionable judgment, unreliability and unwillingness to comply with rules and regulations. The Guideline also provides for Mitigating Conditions (MC) including the fact that the information was not pertinent to a determination of trustworthiness (MC 1), or that the falsification was an isolated incident and that correct information was voluntarily provided.(MC 2)

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

Based on the evidence of record, including Applicant's admissions, the Government has established reasons to deny him a security clearance because of drug use and personal conduct. Having established such reasons, the Applicant has the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Applicant's admissions of the use of marijuana related to use before 1996 so are not deemed recent under Guideline H Mitigating Condition (MC 1) The Applicant denies smoking marijuana in the presence of his children, but concedes that this might have occurred once inadvertently in 1989. In any event, this was 14 years ago and is not a recent occurrence within the standard set by the Guideline.

Applicant's excuses for failure to report the drug use and Article 15 punishment are sufficient to provide mitigation under Guideline E in that the falsification was not recent and correct information was subsequently reported on later filed SF 86s.

The alleged failure to report three visits to mental health professionals on his 1997 SF 86 is understandable since the visits were to a marriage counselor that Applicant did not believe qualified as mental health related. The SF 86 Form was changed in his 1999 application to show at Question 19 that marriage counseling was not included in the mental health category and he answered the questions correctly.

The SOR alleges that Applicant failed to state in his 2001 SF 86 that he left a former job because he was about to be fired. That question (Question 20) and its answer are not included in the copy of that SF 86 in the record (Item 4 in FORM) and thus the allegation is not established. Thus, the Government has not established a prima facie case that Applicant falsely answered the relevant question on the 2001 SF 86. However, Applicant did deny the allegation in his answer and stated that although he knew that certain adverse information might reach his supervisors such only fortified a decision he had already made to leave his employment.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that he is trustworthy, reliable, and eligible for access to classified information.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline H: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Paragraph 2. Guideline E FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or renew a security clearance for Applicant. Clearance is granted.

Charles D. Ablard

Administrative Judge