

DATE: April 15, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-28782

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Jr., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Based on the recency of applicant's marijuana use, and his stated intention to continue using it, he is deemed "an unlawful user of . . . a controlled substance," and as such, is disqualified from receiving a DoD security clearance. Clearance is denied.

STATEMENT OF THE CASE

On November 5, 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, 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on November 26, 2003, and elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's written case (FORM) on or about November 9, 2004. Applicant did not file a response to the FORM. The case was assigned to me on December 17, 2004.

FINDINGS OF FACT

Applicant is a 26 year old employee of a defense contractor.

Applicant admits without qualification all of the factual allegations under Guideline H. Accordingly, SOR Paragraphs 1a through 1g are incorporated by reference as Findings of Fact.

Applicant admits without qualification both factual allegations under Guideline C. Accordingly, SOR Paragraphs 2a and 2b are incorporated by reference as Findings of Fact.

With respect to Guideline E, applicant denies that he *intentionally* provided false, material information to the Government in response to Question 26 on a Security Clearance Application (SCA) he executed on March 15, 2001. Because the copy of the executed SCA in question provided in the FORM (Exhibit 4) did not have a Question 26, this allegation, and Guideline E, are found for applicant.

CONCLUSIONS

With respect to Guideline H, the evidence establishes that applicant (1) used marijuana with varying frequency from about 1995 to at least June 2002, and that he intends to continue using it, (2) used LSD with varying frequency from about 1996 to at least July 1998, and (3) used Ecstasy with varying frequency from approximately 1997 to at least July 2001. The evidence further establishes that applicant purchased all three drugs. This conduct reflects adversely on his judgment and reliability, and requires application of Disqualifying Conditions E2.A.8.1.2.1 (*any drug abuse*) and E2.A.8.1.2.2 (*illegal drug possession . . . purchase*). In addition, given the recency of applicant's marijuana use and his stated intention to continue using it, he is deemed to be "an unlawful user of . . . a controlled substance," and as such, is disqualified from receiving a DoD security clearance pursuant to 10 U.S.C. 986. Accordingly, Guideline H is found against applicant.

With respect to Guideline C, applicant was born and raised in the United States, In 2002, on the advice of his mother, he obtained Canadian citizenship. He applied for Canadian citizenship in part because he considered moving and working there. Disqualifying Condition E2.A.3.1.2.1 (*the exercise of dual citizenship*) applies.

Despite applicant's Canadian citizenship, he makes the credible statement that his "loyalties lie entirely with the U.S." (Exhibit 6). Notwithstanding his newly acquired Canadian citizenship, the evidence does not establish applicant has a preference for Canada over the United States. For this reason, Guideline C is found for applicant.

FORMAL FINDINGS

PARAGRAPH 1: AGAINST THE APPLICANT

All subparagraphs found against the applicant

PARAGRAPH 2: FOR THE APPLICANT

Both subparagraphs found for the applicant

PARAGRAPH 3: 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 applicant.

Joseph Testan

Administrative Judge