

DATE: October 21, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-29338

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Department Counsel

FOR APPLICANT

David C. Merkin, Esq.

SYNOPSIS

Applicant admitted her use of marijuana over a 31 year period on her security clearance application. However, the record establishes she has not used it for over three years and demonstrates her intent never to use it again. Clearance is granted.

STATEMENT OF THE CASE

On November 5, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline H (Drug Involvement). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant her access to classified information and recommends that her case be submitted to an Administrative Judge.

On November 20, 2003, Applicant answered the SOR and requested a hearing. The case was assigned to me on February 3, 2004. A notice of hearing was issued on March 16, 2004 and the hearing was held on April 15, 2004. During the hearing, two Government exhibits (Govt Ex), four Applicant exhibits (Ap Ex), and the testimony of two Applicant witnesses, including Applicant, were received. Subsequent to the hearing and with no objection from Department Counsel, Applicant submitted evidence of her completion of an alcohol and drug education program. I have marked the same as Applicant Exhibit E and included it in the file. The transcript (Tr) was received on April 23, 2004.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, including Applicant's admission to all SOR allegations, I make the following findings of fact:

Applicant is a 51-year-old computational linguist employed by a government contractor. She is knowledgeable with regard to Arabic languages and has received awards for her job performance.

On or about January 1970, Applicant began smoking marijuana at the age of 16 while in high school. Although there were periods of time it was not available to her or she did not choose to use it, such as during her pregnancies, she continued to use marijuana until June 2001.⁽³⁾ At times, Applicant purchased marijuana. From August 1988 until June 2001, she used marijuana on a regular basis, two or three times per week. At the time, Applicant was an associate professor at a university.

Applicant has not used marijuana since she left her teaching position at a university and moved to the east coast in June 2001.

On February 2, 2002, Applicant submitted a security clearance application (SF 86). She admitted her marijuana use from January 1970 until June 26, 2001.

On March 19, 2002, Applicant provided a sworn statement to a Defense Security Service (DSS) investigator regarding her use of marijuana. She concluded: "I do not intend to use it as long as I have the responsibility of maintaining a security clearance."

On April 29, 2004, Applicant voluntarily completed a 12 hour alcohol and drug education program. She received an evaluation of excellent for her attitude, participation, attendance, sobriety, and AA attendance.

POLICIES

Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted. Directive E3.1.14. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 pertinent 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. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guideline is applicable to this case.

Guideline H: Drug Involvement

The concern under Guideline H is that improper or illegal involvement with drugs raises questions regarding an individual'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.

Conditions that could raise a security concern and may be disqualifying under Guideline H include E2.A8.1.2.1, any drug abuse (Disqualifying Condition 1). Conditions that could mitigate security concerns include E2.A8.1.3.1, the drug involvement was not recent. They also include: E2.A8.1.3.3, a demonstrated intent not to abuse any drugs in the future (Mitigating Condition 3); and

E2.A8.1.3.4, satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare

requirements, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional (Mitigating Condition 4).

CONCLUSIONS

Applicant's admitted marijuana use over a 31 year period raises Disqualifying Condition 1. She forthrightly admitted her marijuana use on her security clearance application. However, Applicant denies any use of marijuana since she decided to quit using it in June 2001. Moreover, there is no evidence in the record of any recent marijuana use on her part. Therefore, the record supports the application of Mitigating Condition 1.

Although Applicant has successfully completed an alcohol and drug education program, the evidence of record with regard to this program is not sufficient to establish Mitigating Condition 4. For example, there is no evidence of record of the credentials of the counselor who provided an evaluation of Applicant. See ISCR Case No. 98-0198 (November 17, 1998) at p. 3. However, Applicant's successful completion of the program is consistent with her expressed intent to never use marijuana again.

Because of her statement to the DSS investigator, there is concern reflected in the SOR that Applicant may resume her marijuana use if she no longer needs a security clearance. As Applicant explained in her testimony, however, she did not intend to suggest she might ever resume the use of marijuana. Moreover, Applicant's decision to stop using marijuana was not solely driven by the expectancy of needing a security clearance. She was concerned with setting a bad example for her children who were reaching their teen age years. Applicant also was becoming increasingly mindful of the adverse impact that marijuana smoking was having on her health. Her change in location presented the opportunity for a fresh start. In the three years since that move, Applicant has demonstrated an intent not to abuse any drugs in the future. Moreover, the information that Applicant acquired from an alcohol and drug education program would appear to have reinforced the health concern that caused her to stop smoking marijuana. Accordingly, the record supports the application of Mitigating Condition 3.

Despite the length of applicant's marijuana use, the record demonstrates that it is in her past and not in her future. On that basis, I find in favor of Applicant.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline H: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

DECISION

In light of all the evidence in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Signed

Roger E. Willmeth

Administrative Judge

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*

(Directive), dated January 2, 1992, as amended and modified.

3. Applicant admitted she briefly experimented with other drugs, such as LSD and cocaine, while attending college. However, Applicant denies and there is no evidence in the record she has used any non-prescription drug other than marijuana for the last 25 years.