

DATE: October 19, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30819

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant deliberately falsified his security clearance application in 1995 by failing to disclose the full extent of his drug involvement. After disclosing considerable drug involvement in a written statement to a Defense Security Service agent, Applicant was granted a confidential clearance. Applicant's clearance was terminated in 2001 because he tested positive for marijuana. He was interviewed again in 2002 and failed to disclose the full extent of his drug involvement. 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 12 March 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision—security concerns raised under Guideline H (Drug Involvement), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on 5 April 2004 and elected to have the case decided on the written record in lieu of a hearing before an administrative judge. On 7 July 2004, Department Counsel issued a file of relevant material (FORM). Applicant received the FORM on 20 July 2004 and had 30 days to respond to the FORM, but failed to do so. The case was assigned to me on 16 September 2004.

FINDINGS OF FACT

Applicant is a 47-year-old project site supervisor for a defense contractor.

On 18 August 1995, Applicant completed a security clearance application (SCA). Item 4. In the SCA, Applicant admitted that he bought some marijuana in October 1977, smoked it, and was arrested. He claimed he had not smoked marijuana since. *Id.* at 6. On 13 October 1995, the Government requested a copy of Applicant's arrest record from the FBI. The rap sheet showed Applicant had been arrested and convicted twice of possession of drugs: once in October 1979, for which he was convicted and paid a \$10 fine; and once in September 1981, for which he was convicted and sentenced to 12 months confinement and a \$10 fine. Item 5 at 3-4.

Applicant gave a signed, sworn statement to a Defense Investigative Service (DIS) agent on 3 April 1996. In the statement, Applicant admitted being arrested for possession of marijuana on two occasions between 1978 and 1981. He also admitted that while in the U.S. Navy and deployed to Italy in 1979, he was arrested by local police for possessing a hashish pipe with hashish resin in it. Applicant went on to describe his use of drugs. He claimed the first time he used marijuana on a weekly basis between 1974 and 1984. He smoked hashish between 1977 and 1979 approximately 15 times. He purchased the marijuana that he used. He claimed he had no intentions of ever using illegal drugs again.

Despite his drug use and failure to provide accurate information on his SCA, he was granted a confidential security clearance on 3 May 1996. On 7 September 2001, as part of the defense contractor's drug-free workplace policy, Applicant submitted a urine specimen for testing. His specimen tested positive for marijuana. Items 8, 9. His clearance was terminated for cause with eligibility for reinstatement in September 2002.

On 13 June 2002, Applicant was interviewed by a Defense Security Service (DSS) agent concerning his drug use. In a signed, sworn statement Applicant asserted that he used marijuana on two or three occasions in 1973-74, while he was in high school. "I never used marijuana again, until August [20]01, while driving to New Jersey to attend the funeral of my wife's aunt." Item 6 at 1-2. He further explained what happened to him after he tested positive for marijuana in 2001. He attended a company sponsored drug program for approximately one month. He ceased going to the program when he sought employment with a different defense contractor. His new employer required him to take a pre-employment drug test that "was inconclusive due to dilution of the urine sample." *Id.* at 2. He passed the follow-up test. Applicant further stated that he "used no illegal drugs other than marijuana," had "never been involved in the purchasing . . . of any illegal drugs," and "never been arrested for any kind of offense involving illegal drugs." *Id.* at 3.

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 personnel 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, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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.

CONCLUSIONS

Guideline H--Drug Involvement

In the SOR, DOHA alleged Applicant used marijuana in 2001 and on a weekly basis from 1974-84 (¶ 1.a), tested positive for marijuana in September 2001 (¶ 1.b), received counseling because of the positive drug test (¶ 1.c), used marijuana after being granted a security clearance (¶ 1.d), had his security clearance terminated because of the positive drug test (¶ 1.e), used marijuana after stating he had no intention of doing so (¶ 1.f), was arrested in 1981 for possession of marijuana (¶ 1.g), was arrested in 1979 for possession of marijuana (¶ 1.h), was arrested in Italy for possession of hashish (¶ 1.i), smoked hashish 15 times from 1977-79 (¶ 1.j), and purchased marijuana from 1974-84 (¶ 1.k). 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 that Applicant abused drugs by using marijuana and hashish (DC E2.A8.1.2.1) and purchased marijuana (DC E2.A8.1.2.2). Although Applicant vowed in his 1996 and his 2002 statements not to use drugs in the future, I find them not credible. I find against Applicant on ¶¶ 1.a, 1.f-1.k. The other allegations are redundant or merely recite facts that do not rise to the level of a disqualifying condition. There is no evidence Applicant received a diagnosis of drug abuse or dependence by a licensed medical professional or clinical social worker that would invoke any other disqualifying condition.

Guideline E--Personal Conduct

In the SOR, DOHA alleged Applicant deliberately falsified material facts in his SCA by deliberately failing to list, in answer to question 20.a the full extent of his drug use (¶ 2.a) and in a signed, sworn statement by failing to disclose he had purchased marijuana (¶ 2.b) and had used marijuana from 1974-84 (¶ 2.c). 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 Applicant admitted each of the allegations. He deliberately falsified his SCA by failing to disclose relevant and material facts--the full extent of his drug involvement. DC E2.A5.1.2.2. In his 13 June 2002 signed, sworn statement, Applicant deliberately provided false information concerning relevant and material matters to a investigator in connection with a security determination-his involvement with drugs. DC E2.A5.1.2.3. None of the listed mitigating factors are applicable. I find against Applicant.

Guideline J--Criminal Conduct

In the SOR, DOHA alleged Applicant violated 18 U.S.C. § 1001 by deliberately omitting material facts from his SCA and the statement to the DSS agent (¶ 3.a). It is a criminal offense to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the executive branch of the Government of the United States. 18 U.S.C. § 1001. Security clearances are within the jurisdiction of the executive branch of the Government of the United States. *See Egan* at 484 U.S. at 527. A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1

The Government established by substantial evidence and Applicant's admissions that he knowingly and willfully made false statements in his SOR and in his signed, sworn statement to the DSS agent regarding his illegal use of drugs. An applicant's drug abuse history is material to a determination of his security worthiness. Applicant's admission to serious criminal conduct is disqualifying. DC E2.A10.1.2.1, E2.A10.1.2.2. None of the listed mitigating conditions apply; there is no clear evidence of successful rehabilitation. *See MC E2.A10.1.3.6*. I find 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

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: 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. Pursuant to 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).