

DATE: December 31, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-31537

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's illegal use of marijuana from 1990 until 1994, and again in July 2002, has not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

**STATEMENT OF THE CASE**

On August 11, 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, (as amended) issued a Statement of Reasons (SOR) to the 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 the Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

The Applicant responded to the SOR in writing on August 27, 2003, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on October 27, 2003. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on October 31, 2003, and did not submit a reply.

The case was assigned to the undersigned for resolution on December 11, 2003.

**FINDINGS OF FACT**

The Applicant is 30 years old and unmarried. He is employed as a Systems Engineer by a defense contractor and is applying for a security clearance in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the

Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline H - Drug Involvement). The Government alleges that the Applicant is ineligible for clearance because he has abused illegal substances.

The Applicant used marijuana from 1990 until 1994 at least two times, at parties with friends. He last used it in July 2002. In a statement he provided to the Defense Security Service, in August 2002, he stated that if someone offers him some marijuana at a party in the future, he might possibly use it. He further states that if his employer told him that he was constrained from using marijuana, he would choose not to use it. (*See*, Government Exhibit 5).

In his response to the SOR, the Applicant states that his past use of marijuana was a mistake and attributed it to the process of growing up. (*See*, Government Exhibit 3).

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because his conduct shows poor judgment, unreliability or untrustworthiness.

The Applicant's illegal drug use set forth above, and the Applicant possible intent to use it in the future.

### **POLICIES**

Enclosure 2 of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

#### Guideline H (Drug Involvement)

Conditions that could raise a security concern:

1. any drug abuse;
2. illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution.

Conditions that could mitigate security concerns:

None.

#### Guideline E (Personal Conduct)

Condition that could raise a security concern:

4. Personal Conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known may affect the person's personal , professional, or community standing or render the person susceptible to blackmail;
6. Association with persons involved in criminal activity.

Conditions that could mitigate a security concern:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation

- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing 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 determination." The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

## CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in instances of drug abuse and poor personal conduct which demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

In this case the Government has met its initial burden of proving that the Applicant engaged in drug abuse (Guideline H) and poor personal conduct (Guideline E). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

Considering all of the evidence, the Applicant has failed to introduce persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

The Applicant's history of drug abuse, from 1990 until 1994, and again in July 2002, at parties with friends, although intermittent, and not frequent, shows extremely poor judgment on his part. The fact that he may possibly use it in the future also shows poor judgment. There is no evidence of a demonstrated intent that he will not use marijuana in the future. None of the mitigating factors apply under either Guidelines H or E. Drug abuse is illegal, and the Applicant knew or should know that it is, and that it is clearly prohibited by the Department of Defense. The Applicant's drug use

was not isolated, but extended over a period of several years, and may continue in the future. Accordingly, under the particular facts of this case, I am given no other choice than to find against the Applicant under Guideline H, (Drug Abuse) and Guideline E (Personal Conduct).

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

### **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

Subpara. 1.c.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against 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 the Applicant.

Darlene Lokey Anderson

Administrative Judge