

DATE: December 22, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31860

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Catherine Engstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant used marijuana, LSD, and PCP and purchased or contributed to the purchase of those drugs. He falsified his security clearance application in 2002 by identifying his past drug use as limited to marijuana. He falsified his drug use on his application because he did not want his employer to know that he used PCP and LSD. Applicant has not used any drugs for 5 ½ years and does not intend to use drugs in the future. 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 March 11, 2003, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision—security concerns raised under Guideline H (Drug Involvement) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on April 10, 2003, and elected to have a hearing before an administrative judge. The case was assigned to me on July 2, 2003. On July 8, 2003, a Notice of Hearing was issued. On July 29, 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the transcript (Tr.) of the proceeding on August 6, 2003.

FINDINGS OF FACT

The SOR contains seven allegations of disqualifying conduct. Six allegations relate to conduct charged under Guideline H, Drug Involvement, and one allegation relates to conduct charged under Guideline E, Personal Conduct. Applicant admitted all seven factual allegations of the SOR. He stated that the dates he used marijuana as alleged in subparagraph 2.a. of the SOR were not correct. Applicant stated that the correct dates for his use of marijuana were 1996 to early 1998. Applicant's admissions are incorporated as findings of fact.

Applicant was born in 1976. He did not finish high school, but began to work for his father in the family business in the

spring of 1995. He continued working for his father until October 1998. Since October 1998 he has been employed as a field engineer with a defense contractor. Applicant was married in July 2000, and he is the father of son, born in January 2002. (Ex. 1; Ex. 3, at 3.)

In 1996, at the age of 20 years, Applicant began purchasing and using marijuana. In 1997/1998, he was smoking a joint of marijuana a day. During this time he spent 50 to 75 dollars a month on marijuana. Applicant used LSD approximately 10 times, beginning in September 1997. After he stopped using LSD, Applicant began to use PCP, which he used three times. Applicant contributed money to purchase the PCP and LSD he used. (Ex. 3, at 3.)

Applicant completed, signed, and certified a security clearance application (SF-86) on March 28, 2002. Question 27 on the SF-86 reads as follows: "Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?" Applicant responded "yes" to Question 27. He listed only his marijuana use, stating that it occurred between September 1997 and April 1999.⁽³⁾ (Ex. 1, at 7; Ex. 2, at 8.) He did not list his use of PCP or LSD.

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 personal security guidelines, as well as the disqualifying conditions and mitigating conditions 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 under Guideline H that Applicant had used marijuana daily at times and on weekends from 1996 to 1998 (¶ 1.a.); that he had purchased marijuana from 1996 to 1998, spending up to \$75 a month to purchase the drug (¶ 1.b.); that he used LSD on Saturdays for three or four months beginning in 1997 (¶ 1.c.); that he purchased LSD papers for \$5 apiece (¶ 1.d.); that he had used PCP on three occasions in 1997 (¶ 1.e.); and that he had purchased PCP at

least once (§ 1.f.)

The Government's concern with Guideline H conduct is that it raises questions regarding an individual's willingness to protect classified information. Drug abuse or dependence may impair social or occupational functioning, thereby increasing the risk of an unauthorized disclosure of classified information. ¶ E2.A8.1.1.1.

Drugs are defined under Guideline H as mood and behavior-altering substances, including drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended, and inhalants and other similar substances. ¶¶ E2.A8.1.1.2., E2.A8.1.1.2.1., E2.A8.1.1.2.2. Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction. ¶ E2.A8.1.1.3.

Through Applicant's own admissions, the Government established a *prima facie* case that he used and purchased illegal drugs. Applicant has admitted Guideline H drug involvement specified in the SOR and identified as disqualifying under ¶¶ E2.A8.1.2.1. and E2.A8.1.2.2 of Guideline H.

The record shows that Applicant's drug involvement ended in 1998, and thus was not recent. Accordingly, mitigating condition E2.A8.1.3.1 applies. It is also clear from the record that Applicant's involvement with drugs was confined to the period 1996 to 1998. While the drug use was not aberrational, it occurred during a relatively brief period in Applicant's life, between the ages of 20 and 22. At his hearing, Applicant stated that he had not used drugs in 5½ years and that he had no intention of ever using drugs again. He stated that he had a wife and family to support, was a regular churchgoer, and had no current or future interest in the drug culture lifestyle. (Tr. 34-35.) I find his statement credible when weighed with his testimony and demeanor at his hearing. Thus, I conclude that mitigating conditions E2.A8.1.3.2 and E2.A8.1.3.3 also apply to Applicant's Guideline H conduct, and I find for the Applicant on the Guideline H allegations in subparagraphs 1.a. through 1.f. of the SOR.

Guideline E, Personal Conduct

In the SOR, DOHA alleged that Applicant's illegal drug use, as alleged in subparagraph 2.a.

raised security concerns under Guideline E, Personal Conduct. Guideline E conduct, which involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, could indicate that an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

With respect to Applicant's Guideline E conduct, the Government has also established its case. In subparagraph 2.a. of the SOR the Government alleged that, in executing his response to Question 27 on the SF-86, Applicant deliberately failed to disclose the drug use identified in subparagraphs 1.c. and 1.e. of the SOR. On March 28, 2002, Applicant completed the certification at the end of the SF-86 and attested, with his signature, that his responses to all questions on the form were true, complete and correct to the best of his knowledge and belief and that he understood that a knowing and willful false statement made in response to any of the questions was punishable under section 1001 of Title 18, United States Code.

Applicant's failure to answer question 27 completely, truthfully, and correctly raises a security concern under ¶ E2.A8.1.2.2. of Guideline E. In his testimony, Applicant stated that he knew his answer to Questions 27 was not complete and correct. (Tr., 30-31.) He said he was afraid to answer the question correctly because he didn't want his employer or those associated with his employer to read his SF-86 and find out that he had used PCP and LSD. (Tr. 30-32.) He said he had learned from friends who had undergone security clearance investigations that he did not need to list the PCP and LSD use on his SF-86 but could reveal that information in an interview with a security agent at a later time and thus keep it from being revealed to his employer. (Ex. 3, at 8, 10.) Applicant's concealment of information he considered embarrassing could make him vulnerable to coercion and blackmail. ¶ E2.A5.1.2.4. His conduct raises additional concerns under ¶ E2.A5.1.2.5 because it suggests a pattern of dishonesty or rule violation. Applicant's reticence to reveal the truth about his conduct suggests that, under some circumstances, he may put his interests before those of the Government.

Mitigating condition E2.A5.1.3.1 does not apply to the facts of this case: the information withheld by Applicant is pertinent to a determination of his judgment, trustworthiness, and reliability. Only one other mitigating condition under

Guideline E might be applicable to the instant case. The security concern raised by Applicant's disqualifying conduct could be mitigated if the falsification was an isolated incident, was not recent, and if the Applicant subsequently provided the correct information voluntarily. ¶ E2.A5.1.3.2. While Applicant supplied the correct information when questioned by a special agent of the Defense Investigative Service, the falsifications on Applicant's SF-86 were not isolated incidents and they are recent. Accordingly, allegations in subparagraph 2.a. of the SOR are concluded against the Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline H.: AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.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.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. Applicant stated in his answer to the SOR that his use of marijuana occurred during the period of 1996 to early 1998.