

DATE: June 25, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-13148

## **DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Catherine Engstrom, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is an employee of a defense contractor who has used marijuana at various times from 1995 until 2001 when he submitted his application for a security clearance (SF 86). He stopped using marijuana late in 1998 in preparation for a job interview and again for over a year in 2000 while he was in a job search. He began using again in 2001 when he realized his employer did not require drug testing. Applicant used ecstasy once in July 2000, and, although he states an intention not to use drugs because of his work, his past record of use and rationale for occasional cessation of use disqualify him from having a clearance. Clearance is denied.

### **STATEMENT OF THE CASE**

On July 14, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant stating reasons why DOHA could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated July 31, 2003, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the government's written case on November 4, 2003. A complete copy of the File of Relevant Material (FORM), consisting of six documents, was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He submitted an additional statement on December 11, 2003. The case was assigned to me on March 22, 2004.

### **FINDINGS OF FACT**

Applicant admitted all of the specific allegations in the SOR in his answer. After a complete and thorough review of the information in the record, and upon due consideration of same, I make the following additional findings of fact.

Applicant is an employee of a defense contractor. He used marijuana at various times from 1995 until 2001, when he submitted his application for a security clearance. (SF 86) He stopped using marijuana for approximately a month in late 1998 in preparation for a job interview and again for over a year in 2000 while he was in a job search. He began using again in 2001 when he realized that his employer did not require drug testing. (Exh. 5)

Applicant used ecstasy once in July 2000, and felt totally uninhibited and able to tell anything to a total stranger. (Exh. 5) His most recent statement in March 2002, indicates that he has not used drugs for two years and does not intend to use in the future since it interferes with his work for the Navy.

### 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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

### CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

Disqualifying Condition (DC) 1 under Guideline H applies to disqualify Applicant from holding a security clearance. Drug involvement is always a security concern because it raises questions about a person's willingness or ability to protect classified information. (E2.A8.1.2. and E2.A8.1.1.3.) Any drug abuse is a condition that may be disqualifying. Drug abuse is defined as "the illegal use of a drug . . ." (E2.A8.1.1.3.)

Mitigating Condition (MC) 2 might apply if there is "[a] demonstrated intent not to abuse any drugs in the future." (E2.A8.1.3.3.) In this matter, the Applicant stopped using for a year in 2000 but started again to use marijuana in 2001. He now states his intent not to use marijuana but his credibility to abstain now is dubious at best. Although there has been a significant passage of time since the last admitted use so the use is not recent (E2.A8.1.3.1.), the pattern of use and the self-serving reasons for discontinuance outweigh the application of the mitigating condition.

The pattern of his usage and the rationale for his periodic discontinuance cast doubt on any sincerity of a desire to permanently stop using drugs. The reasons he advances speak of expediency and not reform of conduct.

With regard to Guideline E, Applicant has shown an unwillingness to comply with legal requirements regarding use of

an illegal substance. Specifically, he has exhibited personal conduct that increases an individual's vulnerability to coercion, exploitation or duress. (E2.A5.1.2.4.) No mitigating conditions advanced by Applicant are applicable. The periodic use over a nine-year period, the latest of which is only three years old, does not establish mitigation under this guideline since the likelihood of recurrent use appears still strong. While he has candidly admitted the use of drugs on the SF 86 and to the investigator, the possibility of his reverting to use in the light of his past record makes the possibility of coercion too great.

After considering all the evidence as a whole, and focusing on the whole person of the Applicant, I conclude it is not clearly consistent with the national interest to grant a security clearance to the Applicant.

### **FORMAL FINDINGS**

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline H: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

### **DECISION**

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge