

DATE: June 21, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-14968

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

**FOR APPLICANT**

Gregory S. Seador, Esquire, Applicant's Counsel

**SYNOPSIS**

The Applicant used marijuana, on an occasional basis, from 1978 until his last usage in May of 2002. He also purchased marijuana on several occasions. He has expressed a credible intent not to use marijuana in the future. His averment is supported by negative drug tests, by drug free certifications, and by letters of support that testify as to his trustworthiness. As the Applicant's last usage is not recent, more than two years ago, and he credibly intends no future usage, mitigation is shown. Clearance is granted.

**STATEMENT OF THE CASE**

On June 3, 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, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on or about June 17, 2003.

The case was received by the undersigned on February 6, 2004. A notice of hearing was issued on February 27, 2004, and the case was heard on March 25, 2004. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript was received on April 6, 2004. The issues raised here are whether the Applicant's past marijuana abuse militate against the granting of a security clearance. [The Applicant denies the specificity of the allegations.]

**FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 54 years of age, and is employed by a defense contractor that seeks a security clearance on behalf of the

Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

### Guideline H - Drug Involvement

1.a.~1.d. The Applicant first used marijuana in 1978 (Transcript (TR) at page 46 line 16 to page 47 line 2). During the late 1970s, he used marijuana "four or five times" a year (TR at page 47 lines 3~8). During the "early '80s to mid '80s," the Applicant's usage decreased to "two, three times a year" (TR at page 48 line 9 to page 49 line 2). His marijuana usage continued with a similar frequency until early 2001 (TR at page 49 line 3 to page 52 line 5, *see also* Government Exhibit (GX) B at page 3). The next and last time he used marijuana was a year later in May of 2002 (TR at page 50 line 19 to page 52 line 5). He also purchase marijuana several times during the period of his usage (TR at page 88 line 4 to page 94 line 17).

The Applicant intends no future use of marijuana (TR at page 52 line 6 to page 53 line 9, and at page 62 lines 18~24). He no longer associates with those with whom he used marijuana with in the past (TR at page 52 line 24 to page 53 line 9). The Applicant is also subject to periodic and to random drug tests (TR at page 63 line 8 to page 70 line 22). Since his last usage, he has been certified as drug free (Applicant's Exhibits (AppXs) 7~9).

### Mitigation

The Applicant offers two contemporaneous letters of support. One is from a Director of a maritime academy, and the other from a ship's Master who has know the Applicant since 1991 (AppXs 19 and 20). They both aver that the Applicant is trustworthy.

## **POLICIES**

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence that is speculative or conjectural in nature.

The Government must make out its case under Guideline H (Drug Involvement), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant

presently qualifies for a security clearance.

The improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places. If an applicant has demonstrated a lack of respect for the law in his private affairs, there then exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

### **CONCLUSIONS**

The Applicant used marijuana on an occasional basis from 1978 until his last usage in May of 2002. The first and second Disqualifying Conditions are therefore applicable: firstly, there was "drug abuse," and secondly, there was "[i]llegal drug possession, including . . . purchase." However, the first and third mitigating Conditions are also applicable. Under the circumstances of this case, his past marijuana use is "not recent," having occurred more than two years ago. Furthermore, the Applicant has shown a "demonstrated intent," through his testimony and his supporting documentation, "not to abuse drugs in the future." The Applicant's Drug Involvement is therefore not of present security significance; and as such, Guideline H is found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his drug involvement. The Applicant has thus met the mitigating conditions of Guideline H, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline H.

### **FORMAL FINDINGS**

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

### **DECISION**

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

Richard A. Cefola

Administrative Judge