

DATE: December 26, 2003

---

In re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 02-15717

## **DECISION OF ADMINISTRATIVE JUDGE**

**ROGER C. WESLEY**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Nygina T. Mills, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant used marijuana on over eight occasions during September and October 2001 while holding a security clearance and rooming with a boyfriend who sold illegal drugs. She did not acknowledge her recent drug use when first questioned by her supervisor who had received a reliable report of Applicant's marijuana use from another employee. Asked to take a urinalysis she agreed and tested positive the same day. Suspended pending receipt of more detailed data regarding her level of use, Applicant has failed to produce any documented or corroborative evidence to support her claims of discontinuance. Applicant's trust lapses associated with her use of marijuana while holding a security clearance are still too recent to be mitigated. Clearance is denied.

### **STATEMENT OF THE CASE**

On April 14, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant. The SOR 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, and recommended referral to an administrative judge for determination whether clearance should be granted or continued.

Applicant responded to the SOR on May 29, 2003, and elected to have her case decided on the basis of the written record. Applicant was furnished the File of Relevant Material (FORM) on July 14, 2003, and received it on June 27, 2003. She provided no timely response to the FORM within the time permitted. The case was assigned to me September 3, 2003.

### **SUMMARY OF PLEADINGS**

Applicant is a 21-year-old administrative support specialist for a defense contractor who seeks to retain the security clearance she has held since February 2001.

Under Guideline H, Applicant is alleged to have (a) used marijuana, with varying frequency, from about September 2001 to at least October 2001, (b) tested positive for the presence of marijuana during a drug urinalysis screening conducted on November 1, 2001 (followed by suspension), arranged by her employer, after being requested by her employer to do so based on a co-worker's report of her using Ecstasy and marijuana, (c) co-habited with her former boyfriend, who from July 2001 to October 2001 sold Ecstasy and marijuana, and (d) used marijuana during the period alleged while holding a secret security clearance, which is covered by Guidelines E as well.

For her answer to the SOR, Applicant admitted each of the allegations while claiming to have passed two more recent drug tests administered by different employers in December 2001 and December 2002, respectively. Applicant did not indicate whether or not she is still employed by the same defense contractor with whom she was associated with during the period covering her drug involvement allegations.

### **STATEMENT OF FACTS**

The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference adopted as relevant and material findings. Additional findings follow.

Faced with financial difficulties in meeting her share of her rent (with her roommate at the time), Applicant invited her boyfriend (in July 2001) to move into her apartment. From the beginning this boyfriend, who Applicant knew to be selling illegal drugs (marijuana and ecstasy pills) pressured Applicant to try marijuana. Around two months into their relationship, Applicant (in September 2001) relented and tried marijuana with her boyfriend. The marijuana made her feel sleepy. Over the ensuing two months she used marijuana bi-weekly. Around the end of October 2001, she ended her relationship with her boyfriend, broke her lease (jointly with her roommate) and moved back in with her parents.

On approximately November 1, 2001, Applicant was approached by her supervisor and questioned about her recent use of drugs. This meeting took place after a co-worker reported Applicant's admitted use of drugs. When initially confronted by her supervisor, Applicant admitted to past marijuana use but denied any current marijuana involvement and agreed to undergo a drug screening test. Concerned about the possibilities of her losing her job, she wanted to avoid involving her employer in drug use indiscretions. With her supervisor's making the necessary testing arrangements, Applicant was administered a urinalysis later on the same day. The reported results of Applicant's November 1, 2001 urinalysis were positive for marijuana. However, the level of marijuana concentration could not be immediately determined. So, pending receipt of a final report, Applicant (on November 6, 2001) was placed on unpaid suspension.

Once placed on unpaid suspension by her employer, Applicant sought employment with a second employer. She reportedly tested negative in a drug test administered by this employer in December 2001, and by still another employer in December 2002. Whether or not she remains on unpaid suspension with her defense contractor in the face of her ensuing employment with other employers is not made clear in the record, but is presumed, absent any written notification she no longer requires a clearance from the defense contractor who requested clearance for her. Applicant is already of record in misleading her employer about the recency of her marijuana use, and as a result, her assurances of discontinuance of all illegal substance abuse cannot be accepted at face value. So, without documentation or persuasive corroboration from other reliable sources (none furnished by Applicant), her claimed negative test results with other employers cannot be accepted.

### **POLICIES**

The Adjudicative Guidelines of the Directive (Change 4) list policy considerations to be made by judges in the decision making process covering DOHA cases. These policy considerations require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

## Drug Involvement

*The Concern:* Improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

### Disqualifying Conditions:

DC 1 Any drug use.

DC 2 Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.

### Mitigating Conditions:

MC 1 The drug involvement was not recent.

MC 2 The drug involvement was an isolated or aberrational event.

MC 3 A demonstrated intent not to abuse any drugs in the future.

## Personal Conduct

Basis: conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

### Disqualifying Conditions:

DC 1 Reliable, unfavorable information provided by associates, employees, coworkers, neighbors, and other acquaintances.

DC 4 Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress.

DC 5: A pattern of dishonesty or rule violations.

### Mitigating conditions:

MC 5 The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation or duress.

## Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may

deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

### **CONCLUSIONS**

Applicant comes to these proceedings with some history of using marijuana over a two-month period spanning September and October 2001 while she held a security clearance with her defense contractor. While not fully developed the summary of her interview with her supervisor contains a reported acknowledgment by Applicant of smoking marijuana earlier in her life. Denying any recent use of the substance in this interview, the reference must be to an earlier undeveloped period in her life.

While Applicant's subsequently admitted marijuana use with her boyfriend is not extensive (about eight times over a two month period), she did not admit even this brief use until after she was told of her positive urinalysis conducted later in the day of her initial interview. Her expressed concerns over losing her job does not lessen the impact of her withholding this information. Persons holding access to classified information are expected to be up-front about their judgment lapses and subordinate their private interests for their public ones. This confluence of Applicant's deception and use of an illegal substance (marijuana) while holding a security clearance compound trust questions over whether to accept her claims she has turned away from illegal drugs after terminating her relationship with her boyfriend.

On the strength of the evidence presented, Government may invoke several disqualifying conditions (DC) of the Adjudicative Guidelines for drugs: DC 1 (any drug use) and DC 2 (illegal possession). And because Applicant's illegal substance abuse was undertaken while she held a security clearance and was not promptly disclosed to her supervisor when she was initially confronted with it, judgment and trust issues covered by Guideline E (personal conduct) may also be invoked by the Government. Fully applicable are DC 1 (reliable, unfavorable information), DC 4 (concealment of information that increases individual's vulnerability to coercion, exploitation and duress) and DC 5 (pattern of dishonesty or rule violations).

Without any documented seasoning of avoidance of illegal substances to demonstrate Applicant's learning and profiting from her judgment lapses, it is too soon to make any predictive assessments about her ability to avoid illegal substances in the future. While Applicant's breaking off her relationship with her boyfriend (a reported drug seller) is encouraging, more is needed to document and corroborate Applicant's stated commitments to drug avoidance before the security risks associated with her judgment lapses may be considered mitigated. Unfavorable conclusions warrant with respect to the allegations covered by Guidelines H and E.

In reaching my decision, I have considered the evidence as a whole, including each of the factors set forth in the Procedures section (paragraph 6) of the Directive, as well as E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive.

### **FORMAL FINDINGS**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the E.2.2 factors listed above, I make the following FORMAL FINDINGS:

**GUIDELINE H (DRUGS): AGAINST APPLICANT**

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

Sub-para. 1.d: AGAINST APPLICANT

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Sub-para. 2.a: AGAINST 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 Applicant's security clearance.

Roger C. Wesley

Administrative Judge