

DATE: March 3, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-16288

## **DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Erin C. Hogan, Esq., Deputy Chief Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant, a 50-year-old employee of a defense contractor, used marijuana, hashish, cocaine, a hallucinogen, and amphetamines at various times over a 23-year period. He deliberately lied about his drug use on security clearance applications he submitted in 1988 and 1994. He admitted using these drugs during a security investigation in 2000. Applicant failed to demonstrate it is in the national interest to grant him a security clearance. Clearance is denied.

### **STATEMENT OF THE CASE**

Applicant, an employee of a defense contractor, applied for a security clearance. The Defense Office of Hearings and Appeals (DOHA), the federal agency tasked with determining an applicant's eligibility for access to classified information, was unable to make the affirmative finding that it is in the national interest to grant Applicant a clearance. Therefore, in accordance with the applicable Executive Order<sup>(1)</sup> and Department of Defense Directive,<sup>(2)</sup> DOHA issued a Statement of Reasons (SOR), dated 17 October 2002, detailing why a clearance was not granted and recommending Applicant's case be referred to an administrative judge to determine whether the clearance should be denied/revoked. In the SOR, DOHA alleged Applicant failed to meet the illegal drug (Guideline H), personal conduct (Guideline E), and criminal conduct (Guideline J) personnel security guidelines under the Directive.

Applicant answered the SOR in writing on 4 November 2002. The case was originally assigned to Administrative Judge John Erck on 6 December 2002, but due to region rotation was transferred to me on 16 December 2002. On 5 February 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government's case consisted of four exhibits. Applicant testified on his own behalf, called two witnesses, and submitted three exhibits, two of which were submitted with his Answer to the SOR. A transcript (Tr.) of the proceeding was received on 13 February 2003.

### **FINDINGS OF FACT**

Applicant is a 50-year-old retired Air Force officer who works as a security clerk for a defense contractor. Ex. 1. He enlisted in the Air Force in 1971, obtained a secret security clearance, and served as an Air Operations Specialist. Tr. 30-31. In March 1972, Applicant used marijuana with an old high school friend. At the time, Applicant was serving as a command post controller. During the summer of 1973, he used marijuana with friends while he was on leave pending a transfer to an overseas assignment. Ex. 2 at 1. In 1976, Applicant received an Air Force scholarship to get his college degree. From 1976-78, while he was a student, Applicant used marijuana once or twice. Tr. 33; Ex. 2 at 1.

After graduating college, Applicant was commissioned an officer in the Air Force in 1978. Ex. 1. Thereafter, until 1998, Applicant held a top secret clearance. From that time until approximately 1982, Applicant served as a missile launch control officer for nuclear intercontinental ballistic missiles. In 1982, he purchased, then used, 90 amphetamine capsules to lose weight. Tr. 39-40; Ex. 2 at 2. Later that year, Applicant was transferred to another installation where he served as a shift commander for the Air Force Security Police. Ex. 2 at 1. In September 1982, Applicant used "acid," a hallucinogen not further identified. Tr. 40; Ex. 2 at 2. From 1978 until 1985, Applicant used marijuana approximately once a week. Tr. 33. From 1985-89, Applicant was stationed in California and Korea and stopped using marijuana because he was not near his supplier. Ex. 2 at 2. He resumed using marijuana when he returned to the U.S. and continued through the end of 1989. Tr. 36. In addition to the drug use described above, Applicant used hashish on two or three occasions from 1982-85, and purchased and used cocaine approximately once a month from 1982-85. Tr. 40-41; Ex. 2 at 2.

Applicant retired from the Air Force in 1995. From 1995 until 1998, he maintained his security clearance while working for defense contractors. Tr. 36-37.

In 1999, Applicant helped a young woman get her car started in a mall parking lot. She offered him a marijuana cigarette and he took it. Tr. 38; Answer. He smoked half of it, then flushed the rest.

Tr. 38; Ex 2 at 3.

On 23 August 1988 and 3 January 1994, Applicant executed Personnel Security Questionnaires. Question 20a asked if he had "ever used any narcotic, depressant, stimulant, (to include LSD and PCP) or cannabis (to include marijuana or hashish) except as prescribed by a licensed physician." Question 20b asked if he had "ever been involved in the illegal purchase, possession, or sale of any narcotic, depressant, stimulant, hallucinogen, or cannabis." On both occasions, Applicant answered "no" to both questions and certified that, subject to 18 U.S.C. § 1001, the information was "true, complete and accurate to the best of his knowledge and belief." Exs. 3, 4. Applicant deliberately falsified the questionnaires. Answer; Ex. 2 at 3.

As part of a periodic reinvestigation of his security clearance, Applicant was interviewed on 19 April 1994 by a special agent of the Defense Security Service (DSS). When asked if he had ever used illegal drugs, Applicant deliberately failed to disclose his drug use. Answer.

Applicant was offered a position by his current employer in October 2000 to assist the facility security officer. Ex. 1. Applicant advised his employer that he would have difficulty acquiring the necessary security clearance because he had used drugs and lied on his security clearance applications, and that he would not lie about it in the future. Tr. 15, 19. Nevertheless he was hired. On his security clearance application, dated 10 October 2000, Applicant admitted using illegal drugs. Ex. 1. In a subsequent signed, sworn statement he gave to a Defense Security Service investigator, Applicant admitted using drugs and lying about his drug use on security clearance applications. Exs. 1, 2.

## 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.

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." Exec. Or 10865 § 2. *See* Exec. Or. 12968 § 3.1(b).

Initially, the Government must establish, by substantial 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. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*6-8 (App. Bd. May 9, 2001). Once the Government has established by substantial evidence a prima facie case against the applicant, the 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 (App. Bd. 2002). "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* Exec. Or. 12968 § 3.1(b).

## CONCLUSIONS

### **Guideline H-Drug Involvement**

In the SOR, DOHA alleged that Applicant used marijuana, hashish, cocaine, amphetamines, and a hallucinogen called "acid." It further alleged that Applicant purchased marijuana, cocaine, and amphetamines.

Under Guideline H, an applicant's illegal involvement with drugs, raises questions regarding his willingness to protect classified information. Directive ¶ E2.A8.1.1.1. A security concern may exist if an applicant uses or purchases illegal drugs to include marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens. Directive ¶¶ E2.A8.1.2.1, E2.A8.1.2.2. The following mitigating conditions could possibly apply to Applicant's case:

- (1) The drug involvement was not recent. Directive ¶ E2.A8.1.3.1.
- (2) Applicant demonstrates an intent not to abuse any drugs in the future. Directive ¶ E2.A8.1.3.3.

Through Applicant's admissions, the Government established a prima facie case that Applicant used and purchased drugs as alleged in the SOR. It is a mitigating condition that most of Applicant's drug use is not recent-most occurred over 10 years ago. *See* Directive ¶ E2.A8.1.3.1. However, in light of his use of marijuana one time in 1999, the weight of such mitigation is slight. Applicant's misconduct in 1976 or 1985 cannot be viewed in isolation from his drug use in 1999. *See* ISCR Case No. 000628 at 5 (App. Bd. 2003); ISCR Case No. 01-12452 at 4 (App. Bd. 2003).

Applicant's attempt to demonstrate an intent not to abuse drugs in the future (Directive ¶ E2.A8.1.3.3. is not persuasive. Applicant abused drugs while in positions of trust in the Air Force for over 12 years. He claims he kept the "guy who did the drugs, and the guy who wore the uniform" separate. Tr. 29. Applicant asserts that his life changed in December 1989. He stopped using drugs because he became a Christian. Yet, this did not prevent him from accepting and using marijuana in 1999. Applicant glosses over his 1999 marijuana use by asserting that he was "out of the service, I didn't hold a clearance, and at that point in my life, I didn't think I'd ever be back in the business again. It just didn't seem to matter." But it does matter. The granting of a security clearance is based on the whole person concept. The holder of a security clearance cannot separate his conduct from his duties and responsibilities to protect classified information. Applicant's failure to live by his decision to forego using illegal substances undermines the force of his pledge not to do

so again.

### **Guideline E-Personal Conduct**

In the SOR, DOHA alleges that Applicant deliberately failed to disclose his drug involvement on Department of Defense Personnel Security Questionnaires dated 23 August 1988 and 3 January 1994, and to a DSS investigator on 19 April 1994.

Under Guideline E, conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. Directive ¶ E2.A5.1.1. A security concern may exist when an applicant deliberately omits, conceals, or falsifies relevant and material facts from a personnel security questionnaire or deliberately provides false or misleading information concerning relevant and material matters to an investigator in connection with a personnel security determination. Directive ¶¶ E2.A5.1.2.2, E2.A5.1.2.3. The fact that Applicant took positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress may be a mitigating condition in this case. Directive ¶ E2.A5.1.3.5.

Through Applicant's admissions, the Government established a prima facie case that Applicant deliberately falsified his security clearance applications in 1988 and in 1994, and he lied to a DSS agent about his drug use in 1994. By confessing in 2000 that he had used drugs and lied about it, Applicant "took positive steps to reduce his vulnerability." Directive ¶ E2.A5.1.3.5. Nevertheless, this mitigating action is not sufficient to outweigh the disqualifying condition. He lied about his use of drugs over a long period of time. Even after he stopped using drugs because of his professed acceptance of Christianity, Applicant lacked the strength to tell the truth about his prior drug use.

### **Guideline J-Criminal Conduct**

In the SOR, DOHA alleges that Applicant's purchase and use of illegal drugs while on active duty with the Air Force violated Article 112a, UCMJ (10 U.S.C. § 912a), and his deliberate failure to disclose his drug use to the investigator and on the security clearance application violated 18 U.S.C. § 1001. Under Guideline J, a history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. Directive ¶ E2.A10.1.1. Applicable conditions under Guideline J that could raise a security concern in this case are as follows:

- (1) Allegations or admission of criminal conduct, regardless of whether the person was formally charged. Directive ¶ E2.A10.1.2.1.
- (2) A single serious crime or multiple lesser offenses. Directive ¶ E2.A10.1.2.2.

Mitigating conditions that could possibly apply to Applicant's case are as follows:

- (1) The criminal behavior was not recent. Directive ¶ E2.A10.1.3.1
- (2) The factors leading to the violation are not likely to recur. Directive ¶ E2.A10.1.3.4.
- (3) There is clear evidence of successful rehabilitation. Directive ¶ E2.A10.1.3.6.

Through Applicant's admissions, the Government established a prima facie case that Applicant violated 10 U.S.C. § 912a by using drugs while in the military and violated 18 U.S.C. § 1001 by lying on about his use of drugs on security clearance applications and to a DSS agent. Applicant has a history of drug abuse. I am not convinced the factors leading to violations (his use of drugs) will not recur should the opportunity to do so present itself.

### **FORMAL FINDINGS**

Conclusions as to each of the allegations in the SOR as required by Exec. Or. 10865 § 3, ¶ 7 and the Directive ¶ E3.1.25, are as follows:

Paragraph 1. Guideline H: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e.: Against Applicant

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: 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.

**James A. Young**

**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.

