

DATE: November 13, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-16932

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant used marijuana, on an occasional basis, over a period of seven years, ending in January of 2002. He also purchased the drug on three occasions, spending as much as \$100 during one purchase. The Applicant drug involvement is too recent, so as not to be of current security clearance significance. Clearance is denied.

STATEMENT OF THE CASE

On July 30, 2002, 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 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 August 13, 2002.

Applicant elected to have this case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on September 18, 2002. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received his copy on October 2, 2002, and Applicant's reply was received on or about October 16, 2002. The case was received by the undersigned for resolution on November 7, 2002. The issue raised here is whether the Applicant's admitted drug involvement militates against the granting of a security clearance.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the File of Relevant Material and Applicant's Response. The Applicant is 42 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant.

Guideline H - Drug Involvement

1.a. The Applicant used marijuana, with varying frequency, from about January of 1995 until his last usage on January 1, 2002 (Government Exhibit (GX) 4 at page 9, and GX 5 at page 2). In a sworn statement executed by the Applicant on February 12, 2002, he avers, in part, the following:

Over the past seven years, I have used marijuana on an "average" of one time every three to six months. During the past seven years, there have probably been periods when I haven't used in(*sic*) for a year or so, and other times when I've used it once a week for a period of weeks (GX 5 at page 2).

1.b. As to his purchasing marijuana, the Applicant admits the following:

On three occasions over the past seven years, I have purchased marijuana. The biggest single purchase was \$100, which represented a quarter of an ounce, which can be broken down roughly to eight to 20 rolled marijuana cigarettes. I made this purchase sometime in 1999. The other two purchases were made prior to 1999, and were less than \$100 (GX 5 at pages 2~3).

1.c. As to the Applicant's future intentions as to the use of marijuana, in his February 12, 2002, sworn statement, he candidly swore, "I intend to continue to use marijuana as I have over the past seven years: approximately once every three to six months" (GX 5 at page 3). However, in both his answer to the SOR and in his response to the Government's FORM, the Applicant now disavows his prior sworn stated intention (GX 2 and Response).

Mitigation

The Applicant offers little in the way of mitigation, except that he now disavows any future drug abuse.

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; which must be given binding consideration in making security clearance determinations. The conditions should be followed in every case according to the pertinent criterion, however, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security clearance case presents its own unique facts and circumstances, it should not be assumed that these conditions exhaust the realm of human experience, or apply equally in every case. Conditions most pertinent to evaluation of this case are:

Drug InvolvementConditions that could raise a security concern:

- a. Any drug abuse (drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction); [\(1\)](#)
- b. Illegal drug possession, including . . . purchase;

Conditions that could mitigate security concerns:

none

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 which 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, then there exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

CONCLUSIONS

The Applicant's occasional drug involvement extends over a period of about 7 years, from 1995 until January of this year. He not only used Marijuana, but the Applicant also purchased the illegal substance on at least three occasions, spending as much as \$100 for the drug on one occasion. Although the Applicant now disavows any future drug abuse, it is too soon to say that his past abuse is not of present security significance. Guideline H is therefore found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his drug involvement. The Applicant has thus not met the mitigating conditions of Guideline H, and of Section E.2.2. of the Directive. Accordingly, he has not 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: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. Against the Applicant.
- c. 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 not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge

1. Under the provisions of 10 U.S.C. 986 any person who is the unlawful user of . . . a controlled substance . . . may not be granted or have renewed their access to classified information.