

DATE: July 2, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-21569

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant used marijuana regularly between 1994 and 2001. He still associates several times a month with friends who use marijuana, sometimes in his presence. He has failed to mitigate the security concerns as expressed in Guideline H (drug involvement). Clearance is denied.

STATEMENT OF THE CASE

On October 15, 2003, in accordance with DoD Directive 5220.6, as amended (Directive), the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns about his involvement with illegal drugs. The SOR further informed him that, based on information available to the government, DOHA adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance. [\(1\)](#)

On November 12, 2003, Applicant responded to the SOR (Answer) and admitted to all of the allegations therein. He also requested a determination without a hearing. On March 23, 2004, DOHA Department Counsel submitted a file of relevant materials with seven exhibits (Items 1 - 7) attached (FORM) in support of the government's preliminary decision, a copy of which was sent to Applicant the next day. Applicant received the FORM on April 5, 2004 and was afforded 30-days to submit additional information in his own behalf. However, he did not respond to the FORM by the May 5, 2004 deadline, and the case was assigned to me on May 20, 2004.

FINDINGS OF FACT

Applicant's aforementioned admissions are incorporated herein as facts. After a thorough review of the pleadings and exhibits, I make the following additional findings of fact:

Applicant is a 26-year-old communications engineer employed by a defense contractor full-time since July 2001. He

previously worked for the same company as a summer intern from June 2000 to August 2000 while he was in college. Applicant graduated from college in May 2001 with an engineering degree.⁽²⁾

Applicant began using marijuana in 1994, when he was a junior in high school. He used this drug at least monthly until about the time of his graduation from college. During the same period, he also tried hallucinogenic acid and mushrooms once each, and used cocaine three times.⁽³⁾

Applicant continues to associate with friends who use marijuana and in places where it is often present. One of the persons with whom he associates who uses marijuana is his girlfriend. Such events occur about three times monthly.⁽⁴⁾

POLICIES

The Directive sets forth adjudicative guidelines⁽⁵⁾ to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are those conditions listed under Guideline H (drug involvement).

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽⁶⁾ for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden, it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.⁽⁷⁾

A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁽⁸⁾

CONCLUSIONS

Illegal drug involvement is a security concern because it creates doubts about an applicant's judgment, reliability and trustworthiness. A person who is willing to disregard laws against such conduct may also be willing to disregard rules, regulations and procedures for safeguarding classified information. Further, abuse of illegal drugs may lead to inadvertent disclosure of classified information.⁽⁹⁾ Department Counsel has presented sufficient information to establish a *prima facie* case for disqualification under Guideline H. By virtue of Applicant's extensive and recent use of illegal drugs, disqualifying condition (DC) 1⁽¹⁰⁾ applies.

Against the foregoing, I see no basis for application of any mitigating conditions under this guideline. He continues to associate with persons who use marijuana, thereby showing a disregard for the criminal nature of such conduct. Further, he has stated the main reason he stopped using marijuana when he did was because he needed a clearance. Applicant has also asserted he felt drug use was no longer appropriate for a college graduate now in the workplace. However, I do not accept his representation in this regard because he continued to use marijuana while he was an intern for the same company he works for now.

I am also struck by the statement in his answer to the effect he should be credited for his candor in disclosing his drug use because he could just as easily have concealed it when completing his security clearance application. Any applicant for clearance has a duty to be candid and forthright at all times in his dealings with investigators. However, this Applicant apparently feels he is doing the government a favor by giving truthful answers to questions designed to produce information necessary to fully and accurately assess whether he should have access to classified information. Applicant's statement reflects immaturity of judgment wholly inconsistent with the personnel security program. It also shows his ignorance about the compelling nature of the government's interest in ensuring those who hold a clearance can be trusted to protect the national interest, even at the expense of their personal interests. Applicant's drug use was not isolated, it was recent, and he has not demonstrated an intent to abstain from drug use in the future. I conclude Guideline H against the Applicant.

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guideline. I have also considered the whole person concept as contemplated by the Directive in Section 6.3, and as called for by a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. These facts raise reasonable doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Absent substantial information to resolve those doubts, which Applicant failed to provide, I cannot conclude it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Drug Involvement (Guideline H): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the 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 a security clearance for the Applicant. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Item 4.
3. Items 4 - 7.
4. Item 7; Answer.
5. Directive, Enclosure 2.
6. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).

7. *See Egan*, 484 U.S. at 528, 531.
8. *See Egan*; Directive E2.2.2.
9. Directive, E2.A8.1.1.1.
10. Directive, E2.A8.1.2.1. Any drug abuse