

DATE: February 6, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-23047

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Nygina T. Mills, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Twenty-five-year-old Applicant's five-year history of marijuana abuse, commencing when he was in high school and continuing until at least June 2002, including the period after which he was granted an interim security clearance in July 2001, as well as his knowledge that doing so was illegal, despite his relatively recent abstinence and declared intention to abstain from smoking marijuana in the future, raises grave questions and doubts as to his security eligibility and suitability. Clearance is denied.

STATEMENT OF THE CASE

On May 28, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, "*Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, "*Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, 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 for Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated July 1, 2003, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on November 7, 2003. A complete copy of the file of relevant material (FORM)⁽¹⁾ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. His response was due December 31, 2003, but Applicant apparently chose not to respond. The case was assigned to me February 5, 2004.

FINDINGS OF FACT

Applicant has admitted both factual allegations pertaining to drug involvement under Guideline H (subparagraphs 1.a.

and 1.b.). Those admissions are incorporated herein as findings of fact.

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

Applicant is a 25-year-old employee of a defense contractor, and is seeking to retain the interim SECRET security clearance initially granted to him in July 2001.

Applicant was an illegal substance abuser whose substance of choice was marijuana. He commenced using marijuana on about two occasions in about June 1997, when he was in high school with friends who were passing around a marijuana "joint" and he was curious about it.⁽²⁾ He abstained from further marijuana use during his freshman year in college, but resumed it again the following year.⁽³⁾ During his last three years in college, ending in May 2001 when he graduated, Applicant used marijuana on about 40 occasions.⁽⁴⁾ He generally used it while attending parties and other social gatherings or "get-togethers" with friends when joints were passed around.⁽⁵⁾ On one such occasion, during his March 2001 spring break, Applicant smoked marijuana at a "coffee shop" in Amsterdam, Netherlands, on two separate occasions just to have the experience of doing so.⁽⁶⁾

Applicant was hired as a software engineer by his current employer, a government contractor, in July 2001, shortly after obtaining his B.S. degree in computer science.⁽⁷⁾ As stated above, he received his interim SECRET security clearance that same month. Among the questions asked in the SF 86 was one about the use of illegal drugs.⁽⁸⁾ Applicant responded to the inquiry by acknowledging the use of marijuana on two occasions between June 1997 and June 2000.⁽⁹⁾ He subsequently offered an explanation for the inaccurate number by claiming he "thought" he had listed his frequency as 20 rather than merely two.⁽¹⁰⁾

A special agent of the Defense Security Service (DSS) interviewed Applicant in June 2002. During that interview, Applicant acknowledged using marijuana again on two more recent occasions.⁽¹¹⁾ In early 2002, while at a college reunion with friends, Applicant smoked marijuana when a joint was passed around the room.⁽¹²⁾ He also acknowledged that during a nearly two-week stay with a college friend in London, England, in late May 2002-early June 2002, about two weeks before the DSS interview, he again joined in the festivities of sharing marijuana with some friends.⁽¹³⁾

On some occasions during his period of substance abuse, Applicant contributed money to the friend who brought marijuana to the party where it was to be used.⁽¹⁴⁾

Applicant's initial motivation for using marijuana was curiosity because others were using it. Marijuana generally gave him the feeling of being "stoned," euphoric, and hungry,⁽¹⁵⁾ but on one or two other occasions, it made him feel paranoid.⁽¹⁶⁾

Applicant was never arrested during his period of illegal substance abuse nor has he undergone any drug treatment or rehabilitation as a result of his marijuana abuse.⁽¹⁷⁾

In June 2002, Applicant stated he did not intend to use marijuana in the future because it might lead to the use of other illegal drugs.⁽¹⁸⁾ In July 2003, he offered to undergo random drug tests to confirm he was no longer using marijuana.⁽¹⁹⁾

The quality of Applicant's work performance has not been disclosed.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified

information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An Administrative Judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E2.2., Enclosure 2, of the Directive, are intended to assist the Administrative Judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an Administrative Judge should consider are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 pertinent 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.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline H - Drug Involvement: 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.

Since the protection of the national security is the paramount consideration, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security," [\(20\)](#) or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded that both standards are one and the same. In reaching this Decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences that are grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the Government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the Government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the Government's case, and to ultimately demonstrate that it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of credibility, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

With respect to Guideline H, the Government has established its case. Applicant's period of improper and illegal drug abuse, essentially consisting of continuing, irregular use (along with periodic *contributions* towards the purchase) of

marijuana from about 1997, when he was in high school, until at least June 2002, is of concern, especially in light of his desire to have continued access to the nation's secrets. Applicant did not simply experiment out of curiosity and stop during his high school experiences. Instead, motivated by social pleasures, notwithstanding the illegal status of his endeavor, he exhibited a pattern of questionable judgment, irresponsibility, and immature behavior. Equally disturbing was the fact that Applicant abstained for about one year while in college and then resumed his marijuana abuse.

It is of substantial concern that Applicant had the opportunity to become and remain abstinent after he had been granted an interim SECRET security clearance in July 2001, but he failed to seize that opportunity. Instead, his continuing marijuana abuse amounted to a sundering of his fiduciary relationship with the Government. In so doing, he took that special relationship and effectively dashed the trust and confidence that the Government had temporarily placed in him.

Applicant's overall conduct pertaining to his marijuana abuse clearly falls within Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1 (*any drug abuse*), DI DC E2.A8.1.2.2. (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*), and DI DC E2.A8.1.2.5. (*failure to successfully complete a drug treatment program prescribed by a credentialed medical professional. Recent drug involvement, especially following the granting of a security clearance, or an expressed intent not to discontinue use, will almost invariably result in an unfavorable determination*).

Applicant's motivation and future intentions are equally important. When he was abusing marijuana the fact that doing so was illegal had no effect on him or his actions. On the one occasion when it was apparently legal to do so, while he was in Amsterdam, he was drawn to the experience. As stated above, Applicant's initial motivation for using marijuana was curiosity because others were using it, and it generally gave him the feeling of being "stoned," euphoric, and hungry. Despite the other one or two occasions when it made him feel paranoid, he continued to use it. The motivation for his resumption or continued use is unclear, especially in light of his relatively recent declared intention not to use marijuana in the future "because "such use may lead to use of other drugs." There was no such concern during 1997-2001, or again after receiving the interim security clearance.

Also, despite marijuana abuse covering approximately five years, Applicant has not undergone any drug awareness, education, or treatment program, to achieve a better self-understanding of the behavioral and psychological effects of his actions and the motivation therefore. Simply superficially claiming that continued enjoyment and social pleasures were motivators, does not signify true insight into the actual motivation for following the course of conduct that he had chosen. Without the development of meaningful countermeasures to the resumption of substance abuse--relapse prevention, the likelihood of recurrence becomes greater.

While crediting Applicant with the wisdom of finally ceasing his substance abuse and remaining abstinent since June 2002, I believe both the successful completion of a drug treatment and rehabilitation or education program, as well as confirmed abstinence for a reasonable period would demonstrate the truly successful transformation from substance abuser to an abstinent, drug-free person, and to provide the basis for a conclusion that such conduct will not continue or recur at some party or reunion in the future. While I am aware there may be no such mandate, under the evidence presented, I possess little confidence that Applicant's marijuana abuse is a thing of the past unlikely to recur.

Applicant has argued his marijuana abuse was not recent, and he has demonstrated an intent not to abuse any drugs in the future, thereby mitigating the allegations against him. He has rejected future illegal substance abuse. That simple pledge, initially made in a DSS interview in June 2002, only about two weeks after his most recent episode, and repeated in July 2003, upon receipt of the SOR, overturned approximately five years of illegal substance abuse, part of which occurred while he held an interim security clearance. Applicant's newly adopted position regarding future intent, accompanied only by a relatively brief period of abstinence, is too recently made and does not, in my estimation, satisfy Drug Involvement Mitigating Condition (DI MC) E2.A8.1.3.3. (*a demonstrated intent not to abuse any drugs in the future*). Furthermore, I have concluded that the period of abstinence since June 2002 is too brief, in light of the length of the marijuana abuse, to support the argument such abuse was not recent, as set forth in DI MC E2.A8.1.3.1. (*the drug involvement was not recent*).

Consequently, I conclude that Applicant has failed to mitigate or overcome the Government's case. The evidence leaves me with questions and doubts as to Applicant's continued security eligibility and suitability. Accordingly, allegations

1.a. and 1.b. of the SOR are concluded against Applicant.

For the reasons stated, I conclude Applicant is not eligible for access to classified information.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline E: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: 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 Applicant. Clearance is denied.

Robert Robinson Gales

Chief Administrative Judge

1. The Government submitted five items in support of its contentions.
2. Item 5 (Statement, dated June 11, 2002), at 1.
3. *Id.*
4. *Id.*
5. *Id.*, at 2.
6. *Id.*
7. Item 4 (Security Clearance Application (SF 86), dated July 25, 2001), at 1-2.
8. Question 27 (Your Use of Illegal Drugs and Drug Activity-Illegal Use of Drugs), at 7.
9. *Id.*
10. Item 5, *supra* note 2, at 2.
11. *Id.*
12. Item 2 (Response to SOR, dated July 1, 2003), at 2.
13. Item 5, *supra* note 2, at 2.
14. *Id.*, at 3.
15. *Id.*, at 2.
16. *Id.*

17. *Id.*, at 3.

18. *Id.*

19. Item 2, *supra* note 12, at 2.

20. Exec. Or. 12968, "*Access to Classified Information*;" as implemented by Department of Defense Regulation 5200.2-R, "*Personnel Security Program*," dated January 1987, as amended by Change 3, dated November 8, 1995, and further modified by memorandum, dated November 10, 1998. However, the Directive, as amended by Change 4, dated April 20, 1999, uses both "clearly consistent with the national interest" (Sec. 2.3.; Sec.2.5.3.; Sec. 3.2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1.; Sec. E3.1.2.; Sec. E3.1.25.; Sec. E3.1.26.; and Sec. E3.1.27.), and "clearly consistent with the interests of national security" (Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (Enclosure 2, Sec. E2.2.2.)