

DATE: March 9, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-23883

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant used marijuana on an occasional basis between 1976 and 1994 and cocaine on an occasional basis from 1980 to 1987. In October 1995, during an investigation of Applicant's suitability for a security clearance, he told a Department of Defense investigator that he had no future intention of using illegal drugs. He was granted a clearance. In 2001, during another investigation of Applicant's suitability for a security clearance, Applicant admitted using marijuana on five occasions between July 2000 and January 2002. Applicant failed to mitigate the drug involvement and personal conduct security concerns raised by his use of marijuana while possessing a security clearance. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 8 September 2003, DOHA issued a Statement of Reasons (SOR) ⁽¹⁾ detailing the basis for its decision-security concerns raised under Guideline H (Drug Involvement) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on 22 September 2003 and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on 22 January 2004. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on 9 February 2004 and responded on 20 February 2004. The case was assigned to me on 5 March 2004.

FINDINGS OF FACT

Applicant is a 45-year-old assembly technician for a defense contractor. He has been married since 1996.

In June 1995, Applicant completed a security clearance application (SCA) as part of the process to obtain a security clearance. Item 5. In response to question 32 about drug and alcohol use, Applicant asserted that he had never used marijuana. *Id.* at 6. In a signed, sworn statement he subsequently made to an agent of the Defense Investigative Service

on 5 October 1995, Applicant admitted using marijuana from approximately 1976 until March 1994 "on an occasional basis." Item 6 at 1. He also admitted using cocaine on an occasional basis from 1980 until 1987. In a follow-up statement made five days later, Applicant stated that he had "no future intentions to use or otherwise involve myself with illegal drugs." Item 7 at 1. In January 1996, Applicant completed another signed, sworn statement in which he admitted purchasing \$2,000 worth of cocaine on at least 3 occasions. He sold some of the cocaine to friends and acquaintances and used the rest himself. Item 9. Despite this drug history, Applicant was granted a top secret security clearance in 1996.

Applicant completed another SCA in February 2001. In answer to question 27 concerning any use of illegal drugs in the previous seven years, Applicant answered that he had used marijuana twice between July and September 2000. Item 4 at 6. Applicant answered "no" to question 28 concerning whether he had ever illegally used a controlled substance while possessing a security clearance. *Id.* In a signed, sworn statement given on 5 February 2002, Applicant admitted using marijuana five times between 7 July 2000 and about 12 January 2002. Item 9 at 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.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An 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.

CONCLUSIONS

Guideline H--Drug Involvement

In the SOR, DOHA alleged Applicant used marijuana from 1976 until at least 2002 (¶ 1.a.), purchased marijuana on at least 20 occasions between 1976 and 1994 (¶ 1.b.), used marijuana after signing a statement on 10 October 1995 that he had no future intentions to use drugs (¶ 1.c.), and used marijuana in 2000, 2001, and 2002 while holding a top secret clearance (¶ 1.d.). The improper or illegal involvement with drugs raises questions regarding an applicant'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. Directive ¶ E2.A8.1.1.

The Government established by Applicant's admissions that he abused a controlled substance (DC E2.A8.1.2.1.) by illegally using marijuana and he illegally possessed drugs (DC E2.A8.1.2.2.) by illegally purchasing marijuana. It is a mitigating condition that the drug involvement was not recent. *See* MC E2.A8.1.3.1. Although the purchases of marijuana and some of the uses of that controlled substance were not recent, I am unwilling to apply this mitigating condition. Knowing how seriously the Department of Defense viewed illegal drug use from the security clearance process and the fact he was subject to random drug testing, Applicant continued to use illegal drugs on a sporadic basis up until 2002 while holding a top secret clearance. I find against Applicant.

Guideline E--Personal Conduct

In the SOR, DOHA alleged Applicant used marijuana in 2000, 2001, and 2002 while holding a top secret security clearance. ¶ 2.a. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonest, or unwillingness to comply with rules and regulations could indicate an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government established by Applicant's admissions that he used marijuana during 2000, 2001, and 2002 while holding a Top Secret security clearance. This is personal conduct that increases Applicant's vulnerability to coercion or exploitation (DC E2.A5.1.2.4) and represents a pattern of rules violations (DC E2.A5.1.2.5.). Applicant claims he has stopped using controlled substances and will not do so in the future. Answer. But he made a similar commitment in 1995 that he did not keep. Item 7 at 1. He was on notice of the seriousness with which the Government viewed illegal drug abuse. He was in a position that was subject to random drug testing. After considering all the circumstances, Applicant failed to demonstrate that he has sufficiently mitigated the security concerns raised by his unreliability and questionable judgment. I find against Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

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

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: 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. Clearance is denied.

James A. Young

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.