

KEYWORD: Drugs; Personal Conduct

DIGEST: Twenty-three-year old Applicant abused marijuana on approximately 100 occasions, until at least August 2003. He continued to do so, and lied about it, after he was: convicted of possession of marijuana in 2001; questioned about such use in his SF 86; granted an interim security clearance; and interviewed by DIS. Until August 2004, his verbal commitment to marijuana was cavalier and steadfast: "I do not care if I violate the law . . . when it pertains to marijuana because I think marijuana should be legalized." His refusal to discontinue his association with drug users and drug dealers was unshakeable. His recent vow to avoid marijuana in the future, when compared to his earlier actions and statements leaves grave doubts as to his security eligibility. Furthermore, 10 U.S.C. § 986 disqualifies him from eligibility for a security clearance. Clearance is denied.

CASENO: 03-20614.h1

DATE: 01/24/2005

DATE: January 24, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-20614

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Twenty-three-year old Applicant abused marijuana on approximately 100 occasions, until at least August 2003. He continued to do so, and lied about it, after he was: convicted of possession of marijuana in 2001; questioned about such use in his SF 86; granted an interim security clearance; and interviewed by DIS. Until August 2004, his verbal commitment to marijuana was cavalier and steadfast: "I do not care if I violate the law . . . when it pertains to marijuana because I think marijuana should be legalized." His refusal to discontinue his association with drug users and drug dealers was unshakeable. His recent vow to avoid marijuana in the future, when compared to his earlier actions and statements leaves grave doubts as to his security eligibility. Furthermore, 10 U.S.C. § 986 disqualifies him from eligibility for a security clearance. Clearance is denied.

STATEMENT OF THE CASE

On May 7, 2004, 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 answer, notarized May 27, 2004, Applicant responded to the allegations in the SOR and requested a hearing. The case was assigned to me on August 2, 2004. A notice of hearing was issued that same day, and the hearing was held before me on August 17, 2004. During the hearing, three government exhibits and the testimony of one Applicant witness (the Applicant) were received. The transcript (Tr.) was received on August 25, 2004.

FINDINGS OF FACT

Applicant has admitted five of the factual allegations pertaining to drug involvement under Guideline H (subparagraphs 1.a. through 1.c., 1.e., and 1.f.), as well as both factual allegations pertaining to personal conduct under Guideline E (subparagraphs 2.a. and 2.b.). Those admissions are incorporated herein as findings of fact. He denied the remaining factual allegations (subparagraphs 1.d. and 1.g.).

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 23-year-old employee of a defense contractor, and is seeking to obtain a SECRET security clearance. He had previously been granted a clearance on an interim basis, but that clearance expired after one year.

Applicant is a substance abuser whose illegal substance of choice is marijuana. He started using marijuana while attending a community college in 1999, ⁽¹⁾ when he was about 18 years old, and continued using it, with varying frequency, until at least August 2003. ⁽²⁾ He has used marijuana on approximately 100 occasions, and the hashish form on one occasion. ⁽³⁾ His marijuana abuse occurred with no set pattern, but generally took place when he was around friends ⁽⁴⁾--many of whom smoke marijuana and a few of whom deal marijuana ⁽⁵⁾--because it makes him feel euphoric, ⁽⁶⁾ and he feels peer pressure from his friends to do so. ⁽⁷⁾

In February 2001, Applicant was arrested by campus police and charged with possession of drug paraphernalia and possession of marijuana over 2.5 grams. ⁽⁸⁾ Upon his plea, he was convicted of the charge of possession of marijuana--the other charge was dismissed--and he was fined \$200.00 and placed on 12 months court supervision. ⁽⁹⁾ He was also ordered by the university to seek drug abuse treatment at the university wellness center. ⁽¹⁰⁾

In March 2003, while applying for a position with the government contractor that eventually hired him, Applicant completed a Security Clearance Application (SF 86), ⁽¹¹⁾ and in response to a drug-related inquiry: *(Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbituates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?),* ⁽¹²⁾

Applicant responded "yes," and indicated he had used marijuana on five occasions between November 2000 and February 2001. ⁽¹³⁾ He certified his response was true, complete, and accurate, but it was false, for Applicant minimized the period of his substance abuse, minimized the frequency of such abuse, and omitted the hashish use.

During a June 2003 interview with an agent of the Defense Investigative Service (DIS), Applicant opened up a bit and revised his substance abuse history. He acknowledged using marijuana in 1999, ⁽¹⁴⁾ admitted using it on 35 occasions, rather than just 5, ⁽¹⁵⁾ and admitted purchasing marijuana on at least 3 occasions. ⁽¹⁶⁾ He denied ever using any other substance (such as hashish). ⁽¹⁷⁾ Applicant acknowledged he had lied on his SF 86 because he "thought it might affect [his] chances of getting a clearance." ⁽¹⁸⁾ He vowed he would not use marijuana again in the future, ⁽¹⁹⁾ and promised to "be honest on all future security forms." ⁽²⁰⁾ His comments were reduced to a written statement, and he swore under oath his statement was correct and true as written. Notwithstanding his oath, the statements, vows, and promises appearing in his written statement eventually proved to be false.

In August 2003, Applicant was again interviewed. He admitted he lied on his SF 86, ⁽²¹⁾ and acknowledged when he completed his written statement the previous June, he knowingly, willfully and deliberately lied to the agent who had interviewed him. ⁽²²⁾ He lied about his drug abuse because he "was afraid that [he] would be prosecuted, that [he] would not get [his] clearance, [and] [he] would lose [his] job." ⁽²³⁾ Moreover, he was still using drugs. ⁽²⁴⁾ Applicant knew his written statement of June 2003 was a lie, but feared the truth would cost him his job and result in his prosecution and possible imprisonment. ⁽²⁵⁾ Applicant did not care because he believed he could keep the information from both his employer and the government. ⁽²⁶⁾ In fact, it was Applicant's desire to keep his drug abuse from his employer even after he opened up to the government. ⁽²⁷⁾

Applicant was hired by his employer in June 2003, but continued using marijuana after he was hired and continued to do so--even after receiving an interim SECRET clearance--until one week before making his August 2003 statement. ⁽²⁸⁾ That sworn statement contains several significant admissions and acknowledgments regarding Applicant's motivation for abusing marijuana. They are:

- "I am sure today that I will most likely continue to smoke marijuana." ⁽²⁹⁾
- "I will smoke marijuana in the future." ⁽³⁰⁾
- "I will continue to associate with known drug users and dealers." ⁽³¹⁾
- "I do not care if I violate the law of states and the federal government when it pertains to marijuana because I

think marijuana should be legalized."⁽³²⁾

In his May 2004 Response to SOR, Applicant added some comments pertaining to his substance abuse that provides additional information as to his motivation. They are:

- ". . .full disclosure of such information [on the SF 86 and in the June 2003 statement] would criminally incriminate me and unjustly prevent me from obtaining a security clearance."⁽³³⁾
- "In order to fight this injustice and mandatory invasion into my privacy I decided to lie."⁽³⁴⁾

During the hearing, Applicant again refined his drug-related comments. They are:

- "I could not say that never ever again in my life would I never smoke marijuana."⁽³⁵⁾
- He didn't see anything wrong with marijuana usage even with an interim security clearance.⁽³⁶⁾
- He knew marijuana was illegal.⁽³⁷⁾
- He kept using marijuana after he was arrested in 2001 because he believed the laws were incorrect.⁽³⁸⁾
- It is his present intent never to use marijuana in the future.⁽³⁹⁾

Applicant has experienced periods of depression, lasting a couple of months at a time. He has also had moments in his life when he wanted to kill himself.⁽⁴⁰⁾ A psychiatrist prescribed him Prozac and Depakote to treat his conditions, but after awhile, Applicant stopped seeing the psychiatrist and ceased taking his medication.⁽⁴¹⁾

Applicant has been employed by his current employer, a government contractor, since June 2003, and presently serves as an embedded software engineer.⁽⁴²⁾ The quality of his performance has not been developed in the record.

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 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.

Personal Conduct - 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.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, pertaining to both adjudicative guidelines are set forth and discussed in the Conclusions section below.

On June 7, 2001, the Deputy Secretary of Defense issued a Memorandum, *Implementation of Restrictions on the Granting or Renewal of Security Clearances as Mandated by the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001*. The memorandum provides policy guidance for the implementation of Section 1071 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, which amended Title 10, United States Code, to add a new section (10 U.S.C. § 986) that precludes the initial granting or renewal of a security clearance by the Department of Defense under specific circumstances. The situation described above involves one of those specific circumstances.

The statutory mandate applies to any DoD officer or employee, officer, director, or employee of a DoD contractor, or member of the Army, Navy, Air Force, or Marine Corps on active duty or in an active status, who is under consideration for the issuance or continuation of eligibility for access to classified information and who falls under one or more of the following provisions of the statute:

(1) has been convicted in any court of the United States of a crime and sentenced to imprisonment for a term exceeding one year;

(2) is an unlawful user of, or is addicted to, a controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802));

(3) is mentally incompetent, as determined by a mental health professional approved by the Department of Defense; or

(4) has been discharged or dismissed from the Armed Forces under dishonorable conditions.

The statute also "provides that the Secretary of Defense and the Secretary of the Military Departments concerned may authorize a waiver of the prohibitions concerning convictions, dismissals and dishonorable discharges from the armed forces in meritorious cases." The waiver authority does not apply to current substance abuse or mental incompetence.

Implementing guidance attached to the memorandum indicates that provision 2, described above, "does not change the

substance of the existing adjudication guidelines relative to current drug involvement. Anyone who is currently an unlawful user of, or addicted to, a controlled substance is not considered eligible for a security clearance."

On October 9, 2004, Section 1062 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 was approved and adopted, amending portions of Subsection (c)(1) of section 986 of Title 10, United States Code. Those changes had no bearing on the drug-related allegations in this case.

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 the issuance of the clearance is "clearly consistent with the interests of national security,"⁽⁴³⁾ or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded 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 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, 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 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 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 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 the witness 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:

The government has established its case under Guideline H. Applicant's improper and illegal drug abuse, consisting of the purchase, possession, and use of marijuana, is of concern, especially in light of his desire to have access to the nation's secrets. The Directive clearly expresses the government's concern regarding drug involvement in provision E2.A8.1.1.1. (*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*). Drug abuse is defined in provision E2.A8.1.1.3.: (*the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction*). Provision E2.A8.1.1.2.1. generally identifies and defines drugs: (*drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens)*). Applicant's overall conduct pertaining to his illegal substance abuse clearly falls within Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1. (*any drug abuse*), and DI DC E2.A8.1.2.2. (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*).

Applicant did not simply experiment, while a teenager, out of curiosity, and then quit. Rather, he commenced using marijuana while in college, notwithstanding the illegal nature of his endeavor. He exhibited a lengthy pattern of questionable judgment, irresponsibility, and immature behavior, and continued his substance abuse of marijuana over the years--even after he was arrested, charged, and convicted of marijuana possession in 2001--until at least August 2003. He continued abusing marijuana after he was questioned about such use in his SF 86; after he was granted an interim security clearance; after he was interviewed by DIS; and up to his interview with DSS. Until August 2004, his commitment to continued marijuana abuse was cavalier and steadfast: "I do not care if I violate the law of states and the federal government when it pertains to marijuana because I think marijuana should be legalized." His refusal to discontinue friendship and association with drug users and drug dealers was unshakeable. It was only after reality hit him with the realization that his security clearance and job were about to be lost that Applicant chose to verbalize another course, away from substance abuse.

Based on his inconsistent oral and written statements and admissions, as well as the variety of lies made by him, it is probable the substance abuse has not yet ceased. In light of his recently changed comments regarding future intentions, I construe Applicant's position in this regard as follows: he sees nothing wrong with using marijuana and, until very recently, would have every intention of continuing to do so if the opportunity presented itself. But now, when clearly faced with the probable denial of a security clearance, as well as the loss of his job, he has seen the light and will abstain. Applicant's new position, in my estimation, does not constitute a clear and unambiguous expressed intent to discontinue substance abuse, and therefore, does not fall within DI DC E2.A8.1.2.3. (*a demonstrated intent not to abuse any drugs in the future*). As stated above, improper or illegal involvement with drugs raises questions regarding this individual's willingness or ability to protect classified information. Applicant's past words and actions have created clear doubt over his unwillingness to discontinue illegal marijuana use.

The presence or absence of rehabilitation and other pertinent behavioral changes are significant factors in the overall adjudicative process. Despite a lengthy period of substance abuse, Applicant has adhered to the mission of NORML and ignored what he may have learned while attending a drug awareness, education, or treatment program. His previous statements and actions instead raise substantial questions as to his candor and the honesty of his newly stated position.

Applicant's continuing drug involvement throughout the DIS and DSS investigation process, and after he was granted an interim security clearance, also falls within 10 U.S.C. § 986. Until recently, he refused to state unequivocally that he would no longer use marijuana in the future and has, instead, displayed a somewhat cavalier attitude towards illegal substance use and the necessity of his obtaining a security clearance. Under these circumstances, based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my evaluation of the evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under Enclosure 2 of the Directive, Applicant has failed to mitigate or overcome the government's case. The evidence leaves me with grave questions and doubts as to Applicant's security eligibility and suitability. Accordingly, allegations 1.a. through 1.g. of the SOR are concluded against Applicant. Consequently, under Guideline H and 10 U.S.C. § 986, I conclude Applicant is not eligible for a security clearance.

The government has established its case under Guideline E. Examination of Applicant's actions reveals conduct involving questionable judgment, untrustworthiness, unreliability, and unwillingness to comply with rules and regulations. There is little dispute surrounding Applicant's actions. He admitted he lied on his SF 86, and acknowledged when he completed his written statement the previous June, he knowingly, willfully and deliberately lied to the agent who had interviewed him. He lied about his drug abuse because he "was afraid that [he] would be prosecuted, that [he] would not get [his] clearance, [and] [he] would lose [his] job." Applicant knew his written statement of June 2003 was a lie, but feared the truth would cost him his job and result in his prosecution and possible imprisonment. Applicant did not care because he believed he could keep the information from both his employer and the government. In fact, it was Applicant's desire to keep his drug abuse from his employer even after he furnished additional facts to the government.

Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate, meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. The nature of Applicant's actions therefore pose a serious potential risk to the nation's security precautions which go to the very heart of the nation's security system.

Applicant's overall questionable personal conduct in this regard clearly falls within Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2. (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*), PC DC E2.A5.1.2.3. (*deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination*), PC DC E2.A5.1.2.4. (*personal conduct or concealment of information that increases an individual's vulnerability to coercion,*

exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail), PC DC E2.A5.1.2.5. (a pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency), and PC DC E2.A5.1.2.6. (association with persons involved in criminal activity). None of the Mitigating Conditions apply.

When Applicant was granted his interim security clearance he entered into a fiduciary relationship with the government and implicitly promised to follow the laws of the land and protect the nation's secrets. When accountability time arose, he sundered that fiduciary relationship and revealed his true allegiance--to drugs and protecting his own interests. While there may be some truth to his most recent declared positions, his earlier pattern of deception controls in this situation. Applicant has failed to mitigate or overcome the government's case. The evidence leaves me with grave questions and doubts as to Applicant's continued security eligibility and suitability. Accordingly, allegations 2.a. and 2.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 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

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Paragraph 2., Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.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. Government Exhibit 3 (Statement, dated August 28, 2003), at 3; Tr., at 42.
2. Response to SOR, notarized May 27, 2004.
3. Government Exhibit 3, *supra* note 1, at 2-4.
 4. *Id.*, at 2.
 5. Tr., at 31.
6. Government Exhibit 3, *supra* note 1, at 2.
 7. *Id.*, at 3; Tr., at 46.
8. Response to SOR, *supra* note 2.
9. Government Exhibit 2 (Statement of Subject, dated June 30, 2003), at 1.

10. Government Exhibit 3, *supra* note 1, at 4.

11. Government Exhibit 1 (Security Clearance Application, dated March 25, 2003).

12. Question 27.

13. Government Exhibit 1, *supra* note 11, at 9.

14. Government Exhibit 2, *supra* note 9, at 1.

15. *Id.*

16. *Id.*; Tr., at 43.

17. *Id.*

18. *Id.*, at 2.

19. *Id.*, at 1.

20. *Id.*, at 2.

21. Government Exhibit 3, *supra* note 1, at 1.

22. *Id.*, at 2.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*, at 4.

28. *Id.*, at 2.

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. Response to SOR, *supra* note 2.

34. *Id.*

35. Tr., at 21.

36. Tr., at 26.

37. Tr., at 26, 46.

38. Tr., at 26-28. Applicant was a member of NORML, an organization whose mission is repeal marijuana prohibition

to enable adults to use it without fear of penalty. Tr., at 46.

39. Tr., at 40.

40. Government Exhibit 3, *supra* note 1, at 6.

41. *Id.*, at 7.

42. Tr., at 34.

43. 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.)