

DATE: June 22, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-23590

**DECISION OF ADMINISTRATIVE JUDGE**

**CHRISTOPHER GRAHAM**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant, a 49-year-old employee of a federal contractor with a security clearance, admitted marijuana and cocaine abuse over a 15-year period. He purportedly successfully completed a drug treatment program in 2001 and has been abstinent for over four years. However, there is no prognosis from a credentialed medical professional. On a security clearance application he omitted listing his cocaine use, and concealed his drug abuse during periods when he was holding a security clearance. Applicant has not mitigated these drug involvement and personal conduct security concerns . Clearance is denied.

**STATEMENT OF THE CASE**

On December 8, 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 alleged facts under Guideline H (drugs) and Guideline E (personal conduct) 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 Applicant's security clearance, 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 December 27, 2004, Applicant responded to the allegations in the SOR. Department Counsel submitted a file of relevant material (FORM) in support of the Government's preliminary decision. Applicant received the FORM on March 7, 2005. Applicant was afforded the opportunity to file objections and submit material in refutation, extenuation, or mitigation by April 6, 2005. Applicant declined to submit a response to the FORM. The case was assigned to me on May 11, 2005.

**FINDINGS OF FACT**

Applicant has admitted to all seven of the SOR allegations pertaining to drug involvement under Guideline H (subparagraphs 1.a. through 1.g.), and denied the three allegations of personal conduct under Guideline E (subparagraph 2.a. and b.). Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is a married 49-year-old employee of a federal contractor seeking to obtain a security clearance.<sup>(1)</sup> He was employed by this contractor in 1981.<sup>(2)</sup> He obtained a security clearance in 1980.<sup>(3)</sup> He has a history of marijuana and cocaine abuse.<sup>(4)</sup> He cultivated and purchased these substances and used them during employment with a defense contractor from 1986 until at least April 28, 2001.<sup>(5)</sup> Applicant had avoided detection of his drug use by his employer's random drug screens. He was aware that his drug abuse was illegal. His wife was aware of his drug abuse and had requested that he seek help. In April 2001, he admitted his dependence and contacted his health insurance provider for assistance. He was directed to a chemical dependency center. After working hours, he attended one hour counseling sessions three times each week and two group meetings per week. He was subjected to random drug screens that often occurred twice per week. All exams were negative. His sobriety date is April 28, 2001. He successfully completed the program in early August 2001, and has stated that he has abstained from illegal drug use since then.<sup>(6)</sup> Applicant did not seek treatment through his company's Employee Assistance Program (EAP). He states that no other employee of his company knew of his prior drug use.<sup>(7)</sup>

Applicant has denied that he intentionally falsified his March 2003 security clearance application.<sup>(8)</sup> His reply to question " **27. Your Use of Illegal Drugs and Drug Activity - Illegal Use of Drugs.** *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 (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenic (LSD, PCP, etc.), or prescription drugs?*" was "Yes", that he used marijuana from February 4, 1996 to April 28, 2001. He omitted his cocaine use during that same period. He stated that he was under pressure from his employer's security representative to finish filling out his security questionnaire because the original form had been lost, and that he was working in his office where there was no privacy and people were constantly interrupting him.<sup>(9)</sup>

On that same security clearance questionnaire, he was required to answer question "**28. Your Use of Illegal Drugs and Drug Activity - Use in Sensitive Positions.** *Have you EVER illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a position directly and immediately affecting the public safety?*" He answered: "No."<sup>(10)</sup> He gave the same reasons as his response to question 27.<sup>(11)</sup>

## POLICIES

"[No] one has a 'right' to a security clearance."<sup>(12)</sup> 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."<sup>(13)</sup> 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 coercion, and willingness and ability to abide by regulations governing use, handling, and protection of classified information."<sup>(14)</sup> Eligibility for a security clearance may be adjudicated using the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personnel 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 factors listed in ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will

continue or recur in the future.

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.<sup>(15)</sup> 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.<sup>(16)</sup>

Once the Government establishes a disqualifying condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.<sup>(17)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."<sup>(18)</sup> 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 judgment, reliability and trustworthiness of one who will protect the national interests as his or his 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.<sup>(19)</sup> 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 degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security 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.

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) (DI), Directive, ¶ E2.A8.1.1. *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;* and Guideline E (personal conduct) (PC), Directive, ¶ E2.A5.1.1. *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.*

## CONCLUSIONS

Upon consideration of all the facts in evidence, 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 admitted the use of marijuana and cocaine over more than a 15-year period, ending when he entered a drug counseling program in April 2001. Disqualifying Conditions DI include E2.A8.1.2.1 *Conditions that could raise a security concern and may be disqualifying include:* [1] E2.A8.1.2.1. *(Any drug abuse);* and [2] E2.A8.1.2.2. *(Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution)* are applicable in this case. 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. The cultivation, purchase and use classify Applicant as an abuser. It is interesting to note that Applicant did not seek treatment with his company's EAP. From his statement that no other employee at his employer knew of his drug abuse it can be reasonably inferred that Applicant did not want his employer to know of his drug habit.

The Directive is silent on what constitutes a sufficient period of reform and rehabilitation. However, such silence does not mean I have unfettered discretion in deciding what period of time is sufficient to demonstrate reform and rehabilitation. The sufficiency or insufficiency of an applicant's period of conduct without recurrence of past misconduct does not turn on any bright-line rules concerning the length of time needed to demonstrate reform and rehabilitation, but

rather a reasoned analysis of the facts and circumstances of an applicant's case based on a careful evaluation of the totality of the evidence record within the parameters set by the Directive. Applicant's last use occurred approximately two years before he gave his sworn statement which is recent use. Applicant has expressed he will not use illegal drugs in the future. Even if an applicant is sincere that he has no intention of using drugs in the future, I am not precluded from considering his statement in light of the record evidence as a whole in deciding whether the applicant is likely to adhere to such a commitment in the future. As a matter of common sense and human experience, people do not always successfully adhere to the promise to reform or change their conduct or lifestyle. I have not had the opportunity to personally observe Applicant and evaluate his demeanor or veracity and make a favorable credibility determination. Therefore, I cannot make a favorable determination concerning his future intent.

Applicant used marijuana and cocaine over a 15-year time span. Applicant believes he had developed a mild dependence on the drug. The record contains no medical evidence to either confirm or discount a dependence. His drug involvement was neither an isolated nor an aberrational event. From April 28, 2001, through early August 2001, Applicant received treatment. From the evidence, I am unable to determine whether Applicant has satisfactorily completed a "prescribed drug treatment program", including rehabilitation and aftercare requirements, without recurrence of abuse. Furthermore, there is no favorable prognosis by a credentialed medical professional. None of the Mitigating Conditions apply. I find against Applicant as to Drug Involvement, SOR subparagraphs 1.a. through g.

The Government also alleged that Applicant falsely answered questions on his security clearance applications by omitting his use of cocaine during admitted periods of marijuana use, and his denial of using drugs while holding a security clearance. These come under Guideline E, Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2. (*the deliberate omission, concealment, or falsification of relevant 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*). Applicant explained his answers by saying that he was under pressure from his employer's security representative to finish filling out his security questionnaire because the original form he filled out was lost. He was working in a public work environment that had little or no privacy, and that he inadvertently omitted listing his cocaine usage on question 27 and drug usage on question 28. (20) I do not find these reasons persuasive. Applicant stated that no other employee knew of his drug abuse. He chose not to enter his employer's EAP. This gives the appearance of an effort to conceal his drug use, especially while holding a security clearance, from his employer.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future. Applicant's conduct demonstrates a lack of candor required of cleared personnel. The government has an interest in examining all relevant and material adverse information about an Applicant before making a clearance decision. The government relies on applicants to truthfully disclose that adverse information. Further, an applicant's willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the government relies on in order to perform damage assessments and limit the compromise of classified information. Applicant's conduct suggests he is willing to put his personal needs ahead of legitimate government interests. I resolve Guideline E against Applicant.

In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in the Adjudicative Guidelines of the Directive.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline H: AGAINST THE APPLICANT

Subparagraphs 1.a. Against the Applicant

Subparagraphs 1.b. Against the Applicant

Subparagraphs 1.c. Against the Applicant

Subparagraphs 1.d. Against the Applicant

Subparagraphs 1.e. Against the Applicant

Subparagraphs 1.f. Against the Applicant

Subparagraphs 1.g. Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraphs 2.a. Against the Applicant

Subparagraphs 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 Applicant's security clearance. Clearance is denied.

Christopher Graham

Administrative Judge

1. Item 4 (*Applicant's Application for National Security Clearance SF86 March 4, 2003*) at 1-3.

2. *Id.* at 3.

3. *Id.* at 8-9.

4. Item 3 (*Applicant's Answer dated December 27, 2004*) at 1; Item 5 (*Applicant's sworn Statement dated June 11, 2003*) at 1-2.

5. Item 5, *supra*, at 1-4.

6. *Id.*

7. *Id.* at 3-4.

8. Item 3, *supra*, at 2; Item 4, *supra*, at 6.

9. Item 3, *supra*, at 1.

10. Item 4, *supra*, at 7

11. Item 3, *supra*, at 1.

12. See *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1998).

13. *Id.*, at 527.

14. Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995).

15. *Egan, supra*, at 531.

16. See *ISCR Case No. 95-0611* at 2 (App. Bd. May 2, 1996).

17. See *ISCR Case No. 01-20700* at 3 (App. Bd. Dec. 19, 2002).

18. *Id.*, at 3.

19. See *Egan*; Directive ¶ E2.2.2.

20. Item 3, *supra*, at 1.