

DATE: April 7, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-23630

DECISION OF ADMINISTRATIVE JUDGE

CHRISTOPHER GRAHAM

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 42-year-old employee of a federal contractor admitted using marijuana, psilocybin, and cocaine over more than twenty years. On a security clearance application in 2000, he denied use after 1994. In a subsequent interview and polygraph in 2001, he admitted usage up to near the time of his application in 2000. He further admitted to intentionally falsifying a December 2000 security clearance application regarding his drug usage. Applicant's failure to be truthful in the past make his assertions that he is now drug free not credible. He has not mitigated security concerns over his drug involvement and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On October 5, 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 October 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, a copy of which was received by Applicant on January 18, 2005. Applicant was afforded the opportunity to file objections and submit material in refutation, extenuation, or mitigation by February 17, 2005. Applicant declined to submit a response to the FORM. The case was assigned to me on March 17, 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 admitted the three allegations of personal conduct under Guideline E (subparagraph 2.a. through c.). However, his explanations to 2.b. and c. amount to denials and will be treated accordingly. 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 42-year-old employee of a federal contractor seeking to obtain a security clearance.⁽¹⁾ He was employed by this contractor in 1980.⁽²⁾ He obtained a security clearance in 1986 but was denied a security clearance in 1995, and was denied a special access clearance by the Air Force in 2001, due to drug involvement.⁽³⁾ He has a history of marijuana, psilocybin (mushrooms), and cocaine usage for over 20 years.⁽⁴⁾ He continued use of marijuana and cocaine during employment with a defense contractor from 1980 until at least 2004, and during the time he held a security clearance issued in 1986.⁽⁵⁾ During a 1995 interview he admitted prior drug use but that he planned no future drug use. Despite that assertion, he used marijuana within weeks of that interview and cocaine on several occasions up until June 2000.⁽⁶⁾

On a security clearance application in 2000, Applicant failed to list any drug usage after 1994.⁽⁷⁾ He further states "Have no instances of use in last 6 years and no further intention of use."⁽⁸⁾ When interviewed in 2001, he admitted marijuana and cocaine use in 1995. It was only after a polygraph examination that he admitted to cocaine use between 1996 and 2000.⁽⁹⁾

Applicant has admitted that he intentionally falsified his December 2000 security clearance application.⁽¹⁰⁾ 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 January 1, 1983 to October 1, 1994 and that he used cocaine from October 1, 1983 to July 31, 1994. He admitted that he deliberately failed to disclose marijuana use to 1995 and cocaine use until June 2000.⁽¹¹⁾

On a December 2000 security clearance application, he was required to answer question "28. **Your Use of Illegal Drugs and Drug Activity - Use in Sensative 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." To the same question on a February 2002 application he answered "No."⁽¹²⁾ Applicant explained his responses in his answer to the SOR stating he thought the interpretation of security clearance referred to a special access clearance like the one he was applying for, not the DoD clearance.⁽¹³⁾

POLICIES

"[No] one has a 'right' to a security clearance."⁽¹⁴⁾ 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."⁽¹⁵⁾ 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."⁽¹⁶⁾ 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.⁽¹⁷⁾ 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.⁽¹⁸⁾

Once the Government establishes a disqualifying condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.⁽¹⁹⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽²⁰⁾ 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.⁽²¹⁾ 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, psilocybin (mushrooms), and cocaine over more than twenty years, and admitted each allegation of Paragraph 1 of the SOR. He used cocaine to at least June 2000. He continued his drug involvement after being granted a security clearance in 1986. In the past he has stated he would not use drugs in the future but has returned to his old patterns of drug usage. His failure to be truthful about his past drug abuse make his assertions that he has not used drugs since 2000 and "no future use intended" lack credibility. 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 only mitigating factor that could apply is MC DI E2.A8.1.3.3 *(A demonstrated intent not to abuse drugs in the future)*. Applicant's pattern and lengthy history of drug usage and his continuing use in spite of declarations of future abstinence vitiate any applicability of this mitigating condition. His promises lack believability. I find the SOR allegations in subparagraphs 1.a. through f. against the Applicant.

The Government also alleged that Applicant falsely answered questions on his security clearance applications on two

different submissions in 2000 and 2002, by omitting periods of drug use and by 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 he thought the questions pertained to a special access clearance and not a DoD security clearance. In either case, he still answered the questions falsely. It matters not what type of clearance he thought the questions referenced. The issue is that he did not truthfully answer the questions. Other than these explanations he offered no other rebuttal evidence. No mitigating conditions are applicable. I conclude SOR allegation 2.a., b. and c. against the Applicant.

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. - 1.g. Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraphs 2.a. - 2.c. 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 December 5, 2000*) at 1-3; Item 5 (*Applicant's Application for National Security Clearance SF86 February 13, 2002*) at 1-3.

2. *Id.* at 1.

3. *Id.* at 6-7; Item 6 (*Applicant's Statement dated June 18, 2003*) at 1-4.

4. Item 3 (*Applicant's Answer dated October 27, 2004*) at 1-3; Item 6, *supra*, at 1-4.

5. Item 3, *supra*, at 2.

6. Item 6, *supra*, at 2.

7. Item 4, *supra*, at 6.

8. *Id.* at 6.

9. Item 6, *supra*, at 1.

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

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

12. Item 5, *supra*, at 6.

13. Item 3, *supra*, at 2.

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

15. *Id.*, at 527.

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

17. *Egan, supra*, at 531.

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

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

20. *Id.*, at 3.

21. See *Egan*; Directive ¶ E2.2.2.