

DATE: November 3, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-25062

ECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Jr., Esq, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 27-year-old network engineer for a defense contractor. Applicant admits he used marijuana weekly from 1996 to 2001, that during this time he purchased marijuana every three weeks for his own use, and that he was arrested in 1998 for purchasing marijuana from an undercover police officer. Applicant did not mention his arrest or use and purchase of marijuana when completing his security clearance application. Applicant revealed his arrest and use and purchase of marijuana only when questioned by a special agent of the Defense Security Service. Clearance is denied.

STATEMENT OF THE CASE

On June 15, 2004, The Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb 20, 1990), 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 (Directive). Applicant acknowledged receipt of the SOR on June 28, 2004. The SOR alleges security concerns under Guideline H (Drug Involvement) and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on July 6, 2004 admitting to the allegations in the SOR and elected to have the matter decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on July 19, 2004. Applicant received a complete file of relevant material (FORM) on July 30, 2004 and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. His response was due August 29, 2004. As of October 21, 2004, he had not responded. The case was assigned to me on November 1, 2004.

FINDINGS OF FACT

Applicant is a 27-year-old network engineer for a defense contractor. He submitted a security clearance application as part of his employment with the defense contractor on June 20, 2002. Applicant responded "No" to question 24 asking if

he had ever been charged with or convicted of an offense related to drugs. He responded "No" to question 27 asking if he illegally used any control substance since the age of 16 or in the last 7 years.

Applicant was questioned by a special agent of the Defense Security Service (DSS) on September 16, 2003. He admitted to the agent that he was arrested in 1998 for buying a \$10 bag of marijuana from an undercover police officer. He was fined but not sentenced to confinement. He further admitted that he used marijuana weekly from 1996 to 2001 and would purchase marijuana about every 3 weeks for his personal use. He further admitted that he lied on the security clearance application form when he responded "No" to questions 24 and 27 requesting if he was charged or convicted of a drug related offense or used a controlled substance in the last 7 years or since the age of 16. Applicant said he lied on the security clearance application because he had a newborn son and needed the job with the defense contractor.

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 judgement, 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.

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider: (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 applicant'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 of recurrence. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

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, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance

determination should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR:

Under Guideline H (Drug Involvement (DI)) a security concern exists for an individual who is illegally involved in drugs because it 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. Directive ¶ E2.A8.1.1.1. Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from the approved medical direction. Directive ¶ E2.A8.1.1.3.

Applicant's drug involvement falls under Drug Involvement Disqualifying Condition (DI DC) Directive ¶ E2.A8.1.2.1. (*any drug abuse*) and Directive ¶ E2.A8.1.2.2. (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution*). Applicant admits to using marijuana at least weekly for five years. He admitted to purchasing marijuana every three weeks for his personal use and being arrested for purchasing marijuana. Based on Applicant's admissions, I conclude that he abused and purchased drugs in violation of Guideline H.

Applicants's conduct and statements are not sufficient to raise any of the Drug Involvement Mitigating Conditions (DI MC) of Directive ¶ E2.A8.1.3.1 (*the drug involvement was not recent*); Directive ¶ E2.a8.1.3.2. (*the drug involvement was an isolated or aberrational event*); or Directive ¶ E2.A8.1.3.3 (*a demonstrated intent not to abuse any drugs in the future*); or Directive ¶ E2.A8.1.3.4. (*satisfactory completion of a drug treatment program*). Applicant admits to buying marijuana for his own personal use and being arrested for the purchase of marijuana. He admits to using drugs at least until 2001 and does not offer any statement that he is no longer using drugs. He does not demonstrate an intent not to use drugs in the future or that he has entered or completed a drug treatment program. Applicant has not provided information to establish any of the mitigating conditions under Guideline H.

Under Guideline E (Personal Conduct (PC)), a security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, or *lack of candor, dishonesty*, or unwillingness to comply with rules or regulations. Any of these characteristics in a person could indicated that the person may not properly safeguard classified information Directive ¶ E2.A5.1..1.

Applicant's answers to questions on this 2002 security clearance application brings this matter within Personal Conduct Disqualifying Condition (PC DC) Directive ¶ E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from the personal security questionnaire*). Applicant readily admitted he did not report either his use of marijuana or his arrest for purchase of marijuana in response to questions 24 and 27 of the security clearance application. Applicant's only reason for not including the information was his fear that he would not receive a security clearance and lose his job which he needed to provide for a newly born son. I conclude Applicant's failure to not mention the use of marijuana and the arrest for purchase of marijuana is a lack of candor and deliberate omission or concealment within the meaning of guideline E.

The Personal Conduct Mitigating Conditions (PC MC) that may be relevant to this Applicant are Directive ¶ E2.A5.1.3.1. (*the information was...not pertinent to a determination of judgment, trustworthiness, or reliability*); Directive ¶ E2.A5.1.3.2 (*the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*); and Directive ¶ E2.A5.1.3.3. (*the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*). The information on marijuana use and the arrest was relevant and pertinent to a determination of Applicant's judgment, trustworthiness, or reliability. Applicant only revealed the correct information when confronted by the DSS special agent. His actions in revealing the use and purchase of marijuana were not voluntary and he did not make a good-faith effort to provide correct information before being confronted with the facts of his arrest. I conclude there are no mitigating conditions under Guideline E established by Applicant.

I carefully considered all of the circumstances in light of the "whole person" concept. 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 APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: 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.

Thomas M. Crean

Administrative Judge