

DATE: November 12, 2003

---

In re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 02-32303

## **DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

### **APPEARANCES**

#### **FOR GOVERNMENT**

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

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is 27 years old and an employee of a defense contractor. He admitted using marijuana five times from 1996 to 1997 on his security clearance application (SCA). In fact, Applicant used marijuana a "couple of times per month" and admitted to trying LSD, which Applicant did not disclose on the SCA. Serious security concerns exist regarding Guidelines E (Personal Conduct) and J (Criminal Conduct) that Applicant did not mitigate. Clearance is denied.

### **STATEMENT OF THE CASE**

On July 14, 2003, the Defense Office of Hearings and Appeals (DOHA), under 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 under Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

Applicant submitted a signed and sworn statement, dated July 31, 2003. He denied all the allegations contained in the SOR, and offered explanations and justifications for his prior statements and actions. Applicant requested his case be decided on the written record in lieu of a hearing.

On September 8, 2003, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file a response to the FORM by the October 29, 2003, due date. The case was assigned to me October 30, 2003.

### **FINDINGS OF FACT**

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is 27 years old, unmarried, and works for a defense contractor. (Item 3 at 1 to 3)

Applicant smoked marijuana several times per month from January 1996 to January 1997. At that time Applicant was then a student studying for his undergraduate degree. Applicant also worked part-time jobs during that time to help pay for his education. He was enrolled for six years seeking his degree while also working a series of part-time jobs. Applicant graduated with an engineering degree. (Item 3 at 1 to 3)

Applicant fully disclosed his job termination history and arrest records on the security clearance application (SCA) that he completed on April 26, 2000. Applicant disclosed on the SCA in response to Question 27 (his usage of illegal drugs since the age of 16 or the past 7 years, whichever is shorter) that he used marijuana five (5) times in the period from January 1, 1996, to January 1, 1997. Applicant's statement to the investigator in July 2002 reported he used marijuana sporadically in that time and not consistently, and his disclosure on the SCA was to the best of his recollection. Applicant blames data entry error by him for any misinformation on the SCA, not deliberate falsification. His statement discloses marijuana use a "couple of times per month." He ceased use after that year because his grades in school decreased and he did not want that to happen. (Item 3 at 6 to 8, Item 5 at 1 and 2)

Applicant did not disclose on his SCA in response to Question 27 that he used LSD once in the period of January 1, 1996, and January 1, 1997. Applicant disclosed that information two years after completing the SCA when he gave a statement to an investigator. (Item 5 at 1 and 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 judgement, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing he use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* Section 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicted upon the applicant meeting the security guidelines contained in the Directive.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of:

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation;
- (3) how recent and frequent the behavior was;
- (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 (See Directive, Section E2.2.1. of Enclosure 2).

Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. See Directive Para E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive Para. E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. See Exec . Or. 12968 Section 3.1(b).

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 E - Personal Conduct:**

(A) 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

(B) Conditions that could raise a security concern and may be disqualifying also include:

(2) The deliberate omission, concealment, falsification or misrepresentation 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;

C) Conditions that could mitigate security concerns include:

None

#### **Guideline J - Criminal Conduct**

(A) The Concern: A history or pattern of criminal activity creates doubt about a person's judgement, reliability and trustworthiness.

(B) Conditions that could raise a security concern and may be disqualifying include:

(1) Allegations or admissions of criminal conduct, regardless of whether the person  
the person was formally charged;

(2) A single serious crime or multiple lesser offenses.

C) Conditions which could mitigate security concerns include:

None

Under Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, I can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. Likewise, I have attempted to avoid drawing any inferences that are based on mere speculation or conjecture.

## **CONCLUSIONS**

Upon consideration of all the facts in the record as evidence, and after application of all appropriate legal requirements, factors, and conditions cited above, I conclude the following with respect to each allegation set forth in the SOR:

**Guideline E - Personal Conduct:** Applicant did not make the required and appropriate full disclosure on the SCA in response to Question 27. Applicant cited the reasons why he did not list his more frequent marijuana usage in 1996 to 1997 as his desire that his usage not look like he had a habit of marijuana use. He stated he did not list the LSD use because "he was afraid it might disqualify him for consideration for a security clearance. And if I could not get a security clearance" that his employer would terminate his employment. While I understand his concern, I do not find his reasons persuasive. Applicant admitted he deliberately failed to disclose relevant and requested information on the SCA. Under this guideline, a security concern may exist if an applicant is shown to be untrustworthy, dishonest, lacking in candor, dishonest in his disclosures, and failing to comply with requirements of disclosure. DC 2 applies. I cannot find any Mitigating Conditions which apply here. The finding is against the Applicant.

**Guideline J - Criminal Conduct:** The Government alleged in the SOR that Applicant violated 18 U.S.C. § 1001 by falsifying his SCA. The security concern is that a history or pattern of criminal activity creates doubt about an Applicant's judgment, reliability, and trustworthiness.

It is a criminal offense to knowingly and willfully make a materially false, fictitious, or fraudulent statement or representation in any matter within the executive branch of the U.S. Government. (18 U.S.C. § 1001) Security clearances are within the jurisdiction of the executive branch of the U.S. Government. Applicant admits in his 2002 statement that he deliberately hid relevant information from disclosure on the SCA because of his personal concerns about the Government's possible perception of him and his fear of losing his job. None of the mitigating conditions apply here. The finding is against the Applicant.

## **FORMAL FINDINGS**

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline E: Against Applicant

Subparagraph 1.a.: Against Applicant

Subsubparagraph 1.a.1.: Against Applicant

Subsubparagraph 1.a.2: Against Applicant

Paragraph 2 Guideline J: Against Applicant

Subparagraph 2.a.: Against Applicant

## **DECISION**

In light of all the circumstances and facts presented by the record in this case, it is not clearly consistent with the interest of national security to grant a security clearance to Applicant. Clearance is denied.

---

Philip S. Howe

Administrative Judge