

DATE: May 10, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-00260

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 26-year-old computer technician used and purchased marijuana, LSD, and Ecstasy between 1997 and April 2001. He lied about his drug use on his January 2002 security clearance application (SF 86), thereby violating 10 U.S.C. 1001, a felony. Mitigation has not been shown. Clearance is denied.

STATEMENT OF THE CASE

On April 27, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On May 13, 2004, Applicant submitted responses to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge on the written record, i.e, without a hearing. A File of Relevant Materials (FORM) was issued on August 17, 2004, in which Applicant was advised to file any response within 30 days of receipt of the FORM. Any such response was due by September 25, 2004, but no new submission was received by DOHA. The matter was assigned to me on November 1, 2004.

FINDINGS OF FACT

Applicant is a 26-year-old computer technician for a defense contractor. The SOR contains one allegation under Guideline E (Personal Conduct), 1.a.; one allegation under Guideline J (Criminal Conduct), 2.a.; and four allegations under Guideline H (Drug Involvement), 3.a., 3.b., 3.c., and 3.d. Applicant admits all allegations in the SOR, with explanations. The admissions are incorporated herein as Findings of Fact.

After considering the totality of the evidence found in the FORM, I make the following additional FINDINGS OF FACT as to each SOR allegation:

Guideline E (Personal Conduct)

1.a. - Applicant falsified material facts on a Security Clearance Application (SF 86), dated January 3, 2002, when, in response to Question 27 - "**Your Use of Illegal Drugs and Drug Activity** - Since age 16 or in the last seven years, whichever is shorter," he listed his use of marijuana twice between February 1, 1998 and February 27, 1998, but deliberately failed to disclose that he had used marijuana much more extensively, and had used other drugs within the previous seven years, as set forth below:

- (1) marijuana, with varying frequency, between 1997 and at least April 2001;
- (2) LSD, on at least 20 occasions, between 1998 and 2001;
- (3) Ecstasy, on about 15 occasions, between 1998 and at least April 2001.

Guideline J (Criminal Conduct)

2.a. - the information set forth in SOR 1.a. above, constitutes a violation of Federal law, 10 U.S.C. 1001, a felony.

Guideline H (Drug Involvement)

- 3.a. - the information set forth in SOR subparagraphs 1.a.(1), 1.a.(2), and 1.a.(3), above;
- 3.b. - Applicant has purchased marijuana;
- 3.c. - Applicant has purchased LSD; and
- 3.d. - Applicant has purchased Ecstasy.

POLICIES

Each adjudicative decision must include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that

creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

CONCLUSIONS

Firstly, Applicant *admits* all allegations under all three Guidelines. All of the SOR's allegations are also supported by the totality of the evidence in the record. Secondly, I conclude that the evidence does establish a nexus, or legal/logical connection, with his eligibility to hold a security clearance. The sole remaining question is whether Applicant has adequately established mitigation or extenuation of the negative evidence against him. For the reasons stated below, I conclude he did not do so.

Since this matter is being decided on the written record and Applicant's last submission was his May 13, 2004 response to the SOR, the record evidence closed as of that date.

1. Guideline E,

Applicant's explanation for his falsifications on the SF 86 is as follows:

I failed to provide the information on the security form due to the embarrassment with my family and friends and myself, as I previously provided to [the DoD investigator].

I understand this language to mean that Applicant lied to avoid the embarrassment of having his friends and family find out about his drug use, and that he told the truth only when questioned by the DoD investigator. Second only to an actual violation of the rules for protecting classified information or material, lying about material facts on a security clearance application *or* to an agent of the Defense Security Service (DSS) agent goes most directly to the heart of the industrial security program. Simply put, someone who cannot be trusted to tell the truth in such cases cannot be trusted to protect the nation's secrets.

Applicant lied on his SF 86 about the extent of his drug use. His statement is an explanation, but it does not come anywhere near being an acceptable excuse, since it indicates he placed his fear of embarrassment above the interests of his country, whether he was thinking about his conduct in this light or not.

Disqualifying Condition (2) deliberate omission, concealment, or falsification of material and material facts from any personnel security questionnaire is clearly applicable. At the same time, none of the possible mitigating conditions are established by the record.

2. Guideline J

A history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. Intentional falsifications of material fact (*such as denying drug use*) are clearly the kind of false statement that violates 10 U.S.C. 1001. I conclude that Applicant has committed a felony under Federal law and constitutes a "serious" crime under the Directive.

Disqualifying Conditions 1 (any criminal conduct, regardless of whether the person was formally charged) and 2 (*a single serious crime* or multiple lesser offenses) are applicable. In context, a falsification in a SF 86 signed in January 2002 is still recent, so Mitigating Condition 1 is not applicable. The falsification was an isolated incident (MC 2). Based on Applicant's explanations, the record does not show clear evidence of successful rehabilitation as to his falsification (MC 5).

3. Guideline H

The improper or illegal involvement with drug raises questions about an individual's willingness or ability to protect classified information. The rationale is that drug abuse or dependence may impair social or occupational functioning,

increasing the risk of an unauthorized disclosure of classified information.

My decision is made on the evidence of record at the time the record closed, as reflected in the FORM. Accepting Applicant's figures, he used marijuana from 1997 to at least April 2001; LSD from 1998 to April 2001; and Ecstasy from 1998 to at least April 2001. He also purchased the same three drugs during the same periods. Applicant states his last date of drug use as being April 2001, and claims a severance of ties with his drug-using friends, in favor of concentrating on his education and family. He offers a list of educational accomplishments since 2001, leading to his receipt of a university B.S. in May 2003 and his acceptance into an MBA program at the same university (Item 3).

Disqualifying Conditions (1) any drug abuse and (2) illegal drug possession are applicable, but none of the possible mitigating conditions have been established by the record.

Applicant is 26 years old (born in March 1979). I Have considered the nature of his drug involvement, which began when he was about 19. His last use occurred in April 2001, when he was 22 years old. In this context, I conclude the drug involvement is no longer recent (Mitigating Condition (MC) 1). MC 2 is not applicable since the drug involvement was not an isolated or infrequent event. In the context of his personal accomplishments and apparent lack of relapse. I conclude he has demonstrated an intent not to abuse any drugs in the future (MC 3). Overall, I find for Applicant as to Guideline H.

In summary, even while accepting Applicant's statements as to his ending his drug involvement, his subsequent falsifications continue to raise question about his current judgment and reliability. Under the Directive, Applicant has the ultimate burden of demonstrating his eligibility to hold a security clearance. He has not adequately mitigated the negative aspects of his criminal falsifications under Guidelines E and J.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline E (Personal Conduct) Against the Applicant

Subparagraph 1.a.(1) Against the Applicant

Subparagraph 1.a.(2) Against the Applicant

Subparagraph 1.a.(3) Against the Applicant

Guideline J (Criminal Conduct) Against the Applicant

Subparagraph 2.a. Against the Applicant

Guideline H (Drug Involvement) For the Applicant

Subparagraph 3.a. For the Applicant

Subparagraph 3.b. For the Applicant.

Subparagraph 3.c. For the Applicant

Subparagraph 3.d. For 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.

BARRY M. SAX
ADMINISTRATIVE JUDGE