

DATE: April 7, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-01204

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's marijuana abuse commenced in October 1976, when he was 26-years-old, and continued, with varying frequency, until about April 1983. He apparently abstained until 1998. Thereafter, until at least October 2002, Applicant again abused marijuana, with varying frequency. He sees nothing wrong with abusing marijuana, regardless of how illegal it may be to do so, and may continue such marijuana abuse if the opportunity--a concert, extended weekend, long holiday, or vacation break--presents itself. His marijuana abuse and refusal to provide a clear and unambiguous expressed intent to discontinue any substance abuse leave grave doubts as to his security eligibility. Clearance is denied.

STATEMENT OF THE CASE

On November 7, 2003, 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 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 a security clearance for Applicant, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written answer, dated December 1, 2003, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record, in lieu of a hearing. Department Counsel submitted the government's written case on February 4, 2004. A complete copy of the file of relevant material (FORM) [\(1\)](#) was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Any such submissions were due by March 24, 2004. He failed to respond. The case was assigned to me on April 5, 2004.

FINDINGS OF FACT

Applicant has admitted both of the factual allegations pertaining to Drugs under Guideline H (subparagraphs 1.a. and 1.b.). Those admissions are incorporated herein as findings of fact.

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

Applicant is a 54-year-old employee of a defense contractor, and is seeking to obtain a security clearance.

Applicant is a substance abuser whose choice of illegal substances is marijuana. He commenced using marijuana in about October 1976, when he was about 26-years-old, and continued using it, with a varying frequency, until about April 1983.⁽²⁾ He apparently abstained from further marijuana abuse until 1998.⁽³⁾ Thereafter, until at least October 2002, Applicant again used marijuana, with varying frequency,⁽⁴⁾ generally while with friends, "almost invariably during extended weekends or over a long holiday or vacation break."⁽⁵⁾ His motivation for using marijuana was attributed to enjoying the effects it had on him: feeling somewhat euphoric and chatty, while also enhancing the companionship of friends while smoking marijuana.⁽⁶⁾

During the period of his marijuana use, Applicant purchased about ¼ ounce of marijuana every two to four years, paying about \$50.00 to \$80.00 per purchase.⁽⁷⁾

In October 2002, Applicant was interviewed by a Special Agent of the Defense Security Service (DSS), and he furnished a sworn written statement. Regarding his future intentions pertaining to marijuana, he stated:⁽⁸⁾

I realize that smoking marijuana is illegal but do not believe all the press accounts that marijuana use will lead to the use of hard core drugs. . . . Future use planned: I think it probable that I will occasionally join friends in sharing a joint again, probably about as frequently as in the past. . . so yes.

In December 2003, upon being confronted with the SOR, Applicant seemingly modified his position. He did not recall stating he intended to use marijuana in the future.⁽⁹⁾ He explained the comments in his statement should have been interpreted to indicate:⁽¹⁰⁾

. . . the opportunity may or may not arise (such as a concert) where [Applicant] might be offered marijuana, and [he] may or may not accept the offer. [Applicant] could not state categorically that [he] would or would not accept an offer.

Applicant was never arrested for any illegal substance abuse-related conduct.⁽¹¹⁾

Applicant served on active duty in an enlisted capacity from April 1969 until September 1976.⁽¹²⁾ He attended a community college from 1979 until 1985, and received an associate degree in May 1985.⁽¹³⁾ He has been with his current employer since May 1977, and presently holds the position of integration engineer. He submitted no evidence on the quality of his performance.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider are: (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 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.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Guideline H - Drug Involvement: 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.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, pertaining to this adjudicative guideline are set forth and discussed in the Conclusions section below.

Since the protection of the national security is the paramount consideration, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security,"⁽¹⁴⁾ or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded both standards are one and the same. In reaching this Decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. 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 certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance 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. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon considering of all the facts in evidence, and after applying all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

The government has established its case under Guideline H. Applicant's improper and illegal drug abuse, including the purchase, possession, and use of marijuana, is of concern, especially in light of his desire to have access to the nation's secrets. The Directive clearly expresses the government's concern regarding drug involvement in provision E2.A8.1.1.1. (*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*). Drug abuse is defined in provision E2.A8.1.1.3.: (*the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction*). Provision E2.A8.1.1.2.1.

generally identifies and defines drugs: (*drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens)*). Applicant's overall conduct pertaining to his illegal substance abuse clearly falls within Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1. (*any drug abuse*), and DI DC E2.A8.1.2.2. (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*).

Applicant did not simply experiment, while a teenager, out of curiosity, and then quit. Rather, he commenced using marijuana when he was a young adult, notwithstanding the illegal nature of his endeavor, he exhibited a pattern of questionable judgment, irresponsibility, and immature behavior, and continued his occasional substance abuse of marijuana, initially for a period of about seven years. After abstaining for 15 years, in 1998 he resumed his substance abuse for at least another five years. Based on his December 2002 statement, it is also possible the substance abuse has not yet ceased. Applicant was 53-years-old when he acknowledged last having used marijuana.

One controversial issue in this case pertains to Applicant's future intentions. Applicant did concede that drug abuse violates the law, but disputes press accounts that marijuana use will lead to the use of hard core drugs. I construe Applicant's position in this regard as follows: He sees nothing wrong with abusing marijuana and may continue such marijuana abuse if the opportunity--a concert, extended weekend, long holiday, or vacation break--presents itself. Applicant's position, in the absence of a clear and unambiguous expressed intent to discontinue substance abuse, falls within DI DC E2.A8.1.2.5. (*Failure to successfully complete a drug treatment program prescribed by a credentialed medical professional. Recent drug involvement, especially following the granting of a security clearance, or an expressed intent not to discontinue use, will almost invariably result in an unfavorable determination*). As stated above, improper or illegal involvement with drugs raises questions regarding this individual's willingness or ability to protect classified information. Applicant's words and actions have created doubt over his willingness to discontinue illegal marijuana use.

The presence or absence of rehabilitation and other pertinent behavioral changes are significant factors in the overall adjudicative process. Despite lengthy periods of substance abuse separated by a lengthy period of abstinence, Applicant has not undergone any drug awareness, education, or treatment program, in order to achieve a better self-understanding of the behavioral and psychological effects of his actions and the motivation therefor. While there is no requirement to undergo treatment or attend any of the aforementioned programs, exposure to at least the educational and psychological components of those programs might be beneficial to Applicant. Likewise, simply claiming that enjoyment and euphoria are motivators, does not demonstrate true insight into the actual motivation for the course of conduct which he had chosen.

I do take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my evaluation of the evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under Enclosure 2 of the Directive. I believe that Applicant has failed to mitigate or overcome the government's case. The evidence leaves me with grave questions and doubts as to Applicant's security eligibility and suitability. Accordingly, allegations 1.a. and 1.b. of the SOR are concluded against Applicant.

For the reasons stated, 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 THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.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 a security clearance for Applicant. Clearance is denied.

Robert Robinson Gales
Chief Administrative Judge

1. The government submitted five items in support of its contentions.
2. Item 2 (Response to SOR, dated December 1, 2003).
3. *Id.*
4. There is some inconsistency regarding the frequency of such marijuana use. Applicant has guesstimated it to be "about once a year" as well as "every once in a while. . . during extended weekends." Item 5 (Statement, dated October 11, 2002), at 3.
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*, at 3-4.
9. Item 2, *supra* note 2.
10. *Id.*
11. Item 5, *supra* note 4, at 3.
12. Item 4 (Security Clearance Application (SF 86), dated July 16, 2002), at 3.
13. *Id.*, at 1.
14. Exec. Or. 12968, "*Access to Classified Information*;" as implemented by Department of Defense Regulation 5200.2-R, "*Personnel Security Program*," dated January 1987, as amended by Change 3, dated November 8, 1995, and further modified by memorandum, dated November 10, 1998. However, the Directive, as amended by Change 4, dated April 20, 1999, uses both "clearly consistent with the national interest" (Sec. 2.3.; Sec.2.5.3.; Sec. 3.2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1.; Sec. E3.1.2.; Sec. E3.1.25.; Sec. E3.1.26.; and Sec. E3.1.27.), and "clearly consistent with the interests of national security" (Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (Enclosure 2, Sec. E2.2.2.)