

DATE: May 31 ,2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-02374

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Catherine M. Engstrom, Department Counsel

FOR APPLICANT

Ron Plesco, Personal Representative

SYNOPSIS

Applicant admitted his use of marijuana, as well as his experimentation with a number of other drugs on his security clearance application. Nearly all of the use occurred while he was a student in high school and college. Applicant has been candid throughout the security process and there is no evidence of record of further drug use on his part since December 2002. Applicant no longer associates with people with whom he used marijuana. He is a skilled and conscientious information assurance engineer and now recognizes that drugs have no part in a successful career. Applicant's drug use is mitigated in accordance with itigating Condition 1and Mitigating Condition 3. Clearance is granted.

STATEMENT OF THE CASE

On July 24, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline H (Drug Involvement). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant him access to classified information and recommends that his case be submitted to an Administrative Judge.

On August 27, 2003, Applicant answered the SOR. He requested a hearing on December 15, 2003. The case was assigned to me on March 5, 2004. A hearing was held on June 10, 2004. However, the record of that proceeding was lost before being transcribed. Another hearing was conducted on April 26, 2005. During the hearing, three Government exhibits (Govt Ex), two Applicant exhibits (Ap Ex), and the testimony of two witnesses, including Applicant, were received. The transcript (Tr) was received on May 5, 2005.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is a 26-year-old information assurance engineer employed by a defense contractor. His supervisor, who is aware of his admitted drug use, evaluates Applicant as a skilled, trustworthy, and conscientious employee.

Applicant began using marijuana at the age of 16 in May 1995. He continued to use marijuana until December 2002. Applicant purchased marijuana on occasion and at other times it was provided to him by friends or at parties. (SOR ¶ 1.a-¶ 1.b).

Applicant experimented with Mushrooms on as many as 20 occasions between June 1997 and July 1999. He also purchase Mushrooms on occasion. (SOR ¶ 1.k-SOR ¶ 1.1).

Applicant experimented with LSD on two occasions in November 1997. (SOR ¶ 1.j). He also experimented with Mescaline on two occasions in November 1997. (SOR ¶ 1.i).

Applicant experimented with Ketamine on as many as 30 occasions between December 1997 and May 2000. (SOR ¶ 1.h). He experimented with Cocaine on as many as 10 occasions between July 1998 and June 2001. (SOR ¶ 1.g).

Applicant experimented with Oxycodone on as many as 15 occasions between February 1999 and February 2003. (SOR ¶ 1.f). He experimented with MDMA on as many as 40 occasions between June 1999 and March 2001. (SOR ¶ 1.m).

Applicant experimented with Methamphetamine on as many as four occasions between June 1999 and April 2000. (SOR ¶ 1.e). He experimented with Vicadens for other than prescription purposes on as many as 10 occasions between February 2000 and February 2001. (SOR ¶ 1.d). Applicant experimented with Qualude on as many as five occasions between April 2000 and February 2002. (SOR ¶ 1.c).

Applicant obtained his current employment in April 2002. Shortly thereafter, he obtained his college degree in May 2002.

On May 8, 2002, Applicant executed a security clearance application (SF 86). In response to question 27, ⁽³⁾ he answered, "yes," and reported his drug use as set forth above. (SOR ¶ 1.a-¶ 1.m).

On July 31, 2002, Applicant was interviewed by a special agent of the Defense Security Service (DSS) and provided a sworn statement. He elaborated on his marijuana use and his experimentation with other drugs. Applicant further stated, "drugs are no longer a part of my life and I have no plans to continue to experiment with drugs." Subsequent to the interview, Applicant used marijuana at parties on as many as five occasions until December 2002.

On May 4, 2004, Applicant voluntarily submitted to a drug test administered by a licensed physician. The test was negative for all drugs tested, including drugs Applicant had previously used.

On January 27, 2005, Applicant voluntarily submitted to another drug test administered by a licensed physician. The test was negative for all drugs tested, including drugs applicant had previously used.

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information Within Industry* § 2 (February 20, 1960). 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 and mitigating conditions for each guideline. Each clearance decision must be a fair, impartial,

and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3 of the Directive. 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 conditions listed in the Directive's guidelines and the applicant's security worthiness. *See* ISCR Case No. 95-0611 at 2 (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 (December 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. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive ¶ E2.2.2.

CONCLUSIONS

Guideline H: Drug Involvement

The concern under Guideline H is that improper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. The Directive ¶ E2.A8.1.1. Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction. ¶ E2.A8.1.1.3. Conditions that could raise a security concern under Guideline H and may be disqualifying include *any drug abuse*, ¶ E2.A8.1.2.1 (Disqualifying Condition 1). They also include *illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*, ¶ E2.A8.1.2.2 (Disqualifying Condition 2). Applicant's admitted use of marijuana and experimentation with other drugs over a seven year period evidences Disqualifying Condition 1. His admitted purchase of two illegal drugs also raises Disqualifying Condition 2.

To his credit, Applicant admitted his marijuana use as well as his experimentation with other drugs on his SF 86. Moreover, he admitted in his testimony that he continued to use marijuana after submitting his SF 86 and after being interviewed by a DSS special agent. Applicant's admission of his drug use reflects favorably on his honesty throughout the security process. The drug tests to which he voluntarily submitted buttress his testimony that he has not used marijuana or any illegal drug since December 2002. Moreover, Applicant provides a rational explanation for his abstinence from further drug use. He is no longer a student in an environment that condones experimentation with drugs. Applicant no longer associates with people with whom he shared marijuana at parties. He has an important role in protecting the electronic data of his employer. Based on his own testimony as well as that of his supervisor, Applicant recognizes that drugs have no part in a successful career. In addition, there is no evidence in the record to contradict Applicant's contention that he has not used any illegal drug since December 2002. Therefore, there is no basis for concluding that Applicant has engaged in any illegal drug activity since December 2002. *See* ISCR Case No. 02-24452 (August 4, 2004) at pp. 3-4.

Condition that could mitigate security concerns under Guideline H include ¶ E2.A8.1.3.1 (Mitigating Condition 1), *the drug involvement was not recent* and ¶ E2.A8.1.3.3 (Mitigating Condition 3), *a demonstrated intent not to abuse any drugs in the future*. Based on the record in this case, Applicant has not engaged in any illegal drug use since December 2002. For nearly two and a half years he has avoided all drugs and has demonstrated an intent not to use drugs again. Based on the applicability of Mitigating Condition 1 and Mitigating Condition 3, I find in favor of Applicant with regard to SOR ¶ 1.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline H: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: For Applicant

Subparagraph 1.k: For Applicant

Subparagraph 1.l: For Applicant

Subparagraph 1.m: For Applicant

DECISION

In light of the evidence of record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Signed

Roger E. Willmeth

Administrative Judge

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.
3. "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.), hallucinogenics (LSD, PCP, etc.) or prescription drugs?"