

DATE: November 30, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-04387

DECISION OF ADMINISTRATIVE JUDGE

MARY E. HENRY

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Bruce R. Heurlin, Esq.

SYNOPSIS

From 1976 until 1984, Applicant smoked marijuana and experimented with multiple other drugs as a high school and college student. After college, from 1984 until 1997, he continued to smoke marijuana. During part of this time, he held a security clearance. He intentionally withheld the information related to his drug use when he completed his security clearance applications in 1990 and 2002. He did reveal his 1998 arrest for driving under the influence, but did not reveal that he was also charged with possession of marijuana. Applicant has mitigated the government's security concerns under Guidelines G and J, but has failed to overcome the security concerns as to Guidelines E and H. Clearance is denied.

STATEMENT OF THE CASE

On November 30, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial 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. Specifically, the SOR sets forth security concerns arising under Guideline E, Personal Conduct; Guideline G, Alcohol Consumption; Guideline H, Drug Involvement; and Guideline J, Criminal Conduct, of the Directive. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On January 27, 2005, Applicant submitted his initial notarized response to the allegations. On June 24, 2005, through counsel, he submitted a supplemental notarized response to the allegations. He requested a hearing.

This matter was assigned to another administrative judge on September 6, 2005, but reassigned to me on September 13, 2005 because of caseload considerations. A notice of hearing was issued on September 26, 2005, and a hearing was held on October 14, 2005. The government filed a Motion in Limine opposing the use of polygraph testing results as

evidence, and the testimony of a polygraph expert. Applicant filed a response motion. Based on the decision of the Appeal Board in *ISCR Case No. 96-0785* (App. Bd. Sept. 3, 1998), the government's motion was denied, the evidence was admitted, and the evidence would be weighed. Eleven government exhibits and four Applicant Exhibits were admitted into evidence. (1) Two additional Government Exhibits were admitted for administrative notice. Applicant testified. Two experts also testified on his behalf. Following a brief voir dire, the government stipulated to the expertise of the polygraph expert. (2) The government did not object to the qualifications of the second expert. (3) The hearing transcript (Tr.) was received on October 28, 2005.

FINDINGS OF FACT

Applicant admitted all the allegations of the SOR. (4) Those admissions are incorporated here as findings of fact. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 46-year-old support program manager for a defense contractor. (5) He has worked for this contractor or its predecessor for almost twenty years. (6) He completed a security clearance application (SF 86) in July 2002. (7)

Applicant graduated from college in 1984 with a Bachelor of Arts degree. (8) He recently began working on his Masters in Business Administration. (9) His first marriage ended in divorce. (10) He has remarried. (11) He has primary custody of his twin sons, age 13. (12) He coaches soccer and baseball, and actively participates in the activities of his church, including bible study. (13)

Since beginning his employment, Applicant has progressed forward in his job, assuming more responsibility over the years. He currently works as a program manager and co-team leader. (14)

Since 1996, his performance evaluations have been "outstanding" or "exceeds requirements," with one "meets requirements". (15) He has received cash awards for his performance, and recently, a letter of appreciation. (16) Both his co-workers and his government team members recognize him as an expert in the work he does. (17)

Between 1976 and 1984, his high school and college years, Applicant experimented with various illegal drugs. He tried cocaine about ten times, hallucinogenic mushrooms once, LSD once, hashish one a month or less for a few years, amphetamines about eight times, and marijuana on numerous occasions. (18) He never sold LSD, hashish, cocaine, hallucinogenic mushrooms, or amphetamines. (19) He never bought LSD, hallucinogenic mushrooms, or amphetamines. (20) He has not bought cocaine or hashish since 1985, and with the exception of marijuana, he has not used any drugs since this date. (21)

In 1987, the police arrested Applicant and charged him with possession of a controlled substance (marijuana), a misdemeanor offense. (22) He pled not guilty. (23) The court found him guilty and fined him \$100.00. (24)

In 1990, Applicant completed a security clearance application, wherein he listed his 1987 arrest, (25) and signed a statement. (26) In his signed statement, he acknowledged smoking, and occasionally purchasing, marijuana from 1978 to 1984 due to peer pressure. (27) He then stated he quit smoking marijuana in 1984. (28) He also admitted purchasing and using cocaine while a student, but not to the use of other illegal drugs. (29) Finally, he stated he did not intend to use any illegal drugs in the future. (30) Subsequent to completing this statement, he received a security clearance in 1991. (31)

In January 1998, Applicant and his young sons attended a super bowl party at the home of a friend. (32) During this time, he drank alcohol. He also observed a small bag on the floor. (33) He picked up the bag and put it in his pocket. (34) Before the party ended, his then wife called from the airport and asked that he drive to the airport and pick her up. (35) He told her he had been drinking and did not believe he should drive. (36) She became very upset, and started making

threats related to their impending divorce.⁽³⁷⁾ He drove to the airport, and parked in a no parking zone.⁽³⁸⁾ The police arrived, conducted a sobriety field test, and searched him.⁽³⁹⁾ They found the bag in his pocket, and concluded that it may contain marijuana.⁽⁴⁰⁾ They then arrested him for driving under the influence (DUI) and charged him with DUI and unlawful possession of marijuana.⁽⁴¹⁾ The court found him guilty of DUI, and dismissed the possession of marijuana charge.⁽⁴²⁾ The court sentenced him to two days in jail, fined him \$400.00, and placed him on one year probation.⁽⁴³⁾ He has not used marijuana since 1997, and has stated that he does not intend to use it in the future.⁽⁴⁴⁾ He has not been arrested for any alcohol-related offenses.⁽⁴⁵⁾ He no longer associates with the friend with whom he drank and smoked marijuana.⁽⁴⁶⁾

As previously noted, Applicant completed a second security clearance application. Although he listed his 1998 arrest as a DUI, he did not list his 1987 arrest for possession of marijuana or the additional charge for possession of marijuana in 1998.⁽⁴⁷⁾ He failed to acknowledge his previous illegal drug use while a student and his use of marijuana after he had received a security clearance.⁽⁴⁸⁾ Instead, he answered "no" to questions 27 and 28.⁽⁴⁹⁾ Subsequent to completing his security clearance application, he completed three sworn statements.⁽⁵⁰⁾ In the first sworn statement, he stated he had not used any illegal drugs since 1984, while a college student.⁽⁵¹⁾

1. Pages B-12, B-14, B-15, and B-16 of Applicant Exhibit B and C-1 to C-3 and, C-9 of Applicant Exhibit C were highlighted in yellow by counsel prior to the submission of this evidence into the record.

2. Tr. at 44; *See* Fed.R. Evid. 702, 703.

3. Tr. at 41; *See* Fed.R. Evid. 702, 703.

4. Applicant's supplemental response to SOR, dated June 24, 2005 at 1-2.

5. Government Exhibit 1 (Security Clearance Application, dated July 15, 2002) at 1.

6. *Id.*

7. *Id.*

8. *Id.*; Tr. at 66.

9. Tr. at 66.

10. *Id.* at 67; Government Exhibit 1, *supra* note 5, at 2.

11. Tr. at 66; Government Exhibit 11 (Applicant's Answers to Interrogatories, dated March 19, 2004) at 5.

12. Tr. at 71, Applicant Exhibit C (Court documents on custody decision, dated October 28, 2003) at 9.

13. Applicant Exhibit D (Curriculum Vitae and report, dated October 13, 2005) at 14.

14. Tr. at 72, 78.

15. Applicant Exhibit B-1 through B-18 (Applicant's performance evaluations for the years 1996 through 1998, and 2001 through 2004)

16. Tr. at 74-76; Applicant Exhibit B-19 (letter of Appreciation, dated July 12, 2005).

17. Tr. at 78.

18. Government Exhibit 8 (Applicant's signed sworn statement, dated November 6, 2002).

19. *Id.* at 3-4.

20. *Id.*

21. *Id.* at 1-4.

22. Government Exhibit 10 (Applicant's signed sworn statement, dated October 10, 1990) at 1-2.

23. *Id.* at 2.

24. *Id.*

25. Tr. at 88-89.

26. *Id.* at 89; Government Exhibit 10, *supra* note 22, at 2.

27. Government Exhibit 10, *supra* note 22, at 2.

28. *Id.* at 3.

29. *Id.*

30. *Id.*

31. Tr. at 89.

32. Government Exhibit 8, *supra* note 18, at 1; Tr. at 68.

33. Government Exhibit 8, *supra* note 18, at 1-2; Tr. at 68.

34. *Id.*

35. Tr. at 68-69.

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.* at 69, 84.

40. *Id.*

41. Government Exhibit 2 (United States Department of Justice, Federal Bureau of Investigation, Criminal records report dated July 30, 2002); Government Exhibits 3-5 (State court records on 1998 arrest and disposition).

42. Government Exhibits 3-5, *supra* note 41.

43. *Id.*

44. Tr. at 100.

45. *Id.*

46. *Id.*

47. Government Exhibit 1, *supra* note 5, at 5.

48. *Id* at 5-6.

49. *Id.*

50. Government Exhibit 7 (Applicant's signed sworn statement, dated September 24, 2002); Government Exhibit 8, *supra* note 18; Government Exhibit 9 (Applicant's signed sworn statement, dated November 7, 2002).

51. [\(52\)](#)

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