

DATE: February 23, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-04571

## **DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Edward W. Loughran, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

When he was 18 years old, Applicant purchased cocaine so he could sell it for a profit. He was arrested and eventually pled guilty to attempted possession of cocaine for the purpose of selling it. He also used marijuana a few times, the last time being in 2002, the night before he was sentenced on the cocaine charge. Applicant has matured, turned his life around, and is rehabilitated. Clearance is granted.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 25 March 2004, DOHA issued a Statement of Reasons<sup>(1)</sup> (SOR) detailing the basis for its decision-security concerns raised under Guideline H (Drug Involvement) and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on 13 April 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 6 January 2005. On 9 February 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 18 February 2005.

### **FINDINGS OF FACT**

Applicant is a 24-year-old manufacturing specialist for a defense contractor. He and his girlfriend have a daughter who is less than one year old. They are buying a house and plan to be living together as a family this year. He is well respected by his supervisors and colleagues as a dedicated and reliable worker.

Applicant used marijuana in 1992 or 1993 when he was in junior high school. His father discovered the use and disciplined Applicant. Applicant also used cocaine once in 1993. Applicant was arrested in June 1997 and July 1999 for consuming alcohol while he was a minor. Applicant was acquitted of the 1997 offense and the 1999 offense was dismissed after Applicant completed a court ordered substance abuse course.

On 2 July 1999, Applicant was a passenger in a vehicle driven by a friend. The police stopped the vehicle after smelling the marijuana the driver was smoking. The police found a bag of cocaine Applicant tried to ditch. Applicant had purchased the cocaine so he could sell it and make a profit. The police arrested Applicant. At the station, they found Applicant trying to get rid of a baggie of marijuana that had been in his underwear. He was charged with possession of cocaine for sale, unlawful possession of marijuana, and possession of a handgun during a narcotics offense. The charges were dismissed on 21 July 1999, but re-filed in May 2002. Applicant pled guilty to attempted possession of a narcotic drug for sale. On 11 August 2002, the night before he was sentenced, Applicant used marijuana. He was placed on probation for two years, ordered to complete outpatient treatment, and pay a fine. Applicant successfully completed a substance abuse program. His probation was terminated four months early because he had completed all requirements of the program.

In October 2001, Applicant was indicted for two counts of armed robbery, two counts of kidnapping, and two counts of aggravated assault with a deadly weapon. An eye witness identified Applicant from a photo array as the individual holding a shotgun during one of the robberies. When she saw Applicant at the arraignment, she notified police that she had selected the wrong individual and then pointed out another who had wielded the shotgun. At the request of the state, the judge dismissed the charges without prejudice on 6 November 2001.

## 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 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process 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.

## CONCLUSIONS

### **Guideline H-Drug Involvement**

In the SOR, DOHA alleged Applicant was convicted of attempted possession of a narcotic drug (cocaine) for sale (¶ 1.a); attended substance abuse counseling (¶ 1.b), used marijuana in 1992 or 1993 and in August 2002 (¶ 1.c), used cocaine in 1993 (¶ 1.d), and sold cocaine for profit (¶ 1.e). Applicant all the allegations, except the one in ¶ 1.e. The improper or illegal involvement with drugs raises questions regarding an applicant'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. Directive ¶ E2.A8.1.1.

The Government's evidence and Applicant's admissions establish potentially disqualifying conditions under Guideline H. Applicant abused drugs by using marijuana and cocaine. DC E2.A8.1.2.1. He also illegally possessed marijuana and illegally purchased cocaine. DC E2.A8.1.2.2. Most disturbing is his use of marijuana on the eve of his sentencing for the attempted possession of cocaine for purpose of selling it. Nevertheless, I conclude Applicant's drug abuse is not recent. MC E2.A8.1.3.1. His last use of illegal drugs was almost three years ago. Applicant has a demonstrated intent not to abuse any drugs in the future. E2.A8.1.3.3. He fully understands that a recurrence of drug abuse will likely result in the loss of his clearance and perhaps his job. After considering all of the evidence, including Applicant's young age at the time of the offenses, his acceptance of responsibility, and his personal growth and maturity, I find for Applicant.

## **Guideline J-Criminal Conduct**

In the SOR, DOHA alleged Applicant was convicted of attempted possession of a narcotic drug (cocaine) for sale (§ 2.a); indicted on 3 October 2001 for armed robbery and aggravated assault with a deadly weapon (§ 2.b); arrested in July 1999 and charged with consuming alcohol as a minor (§ 2.c), and arrested in June 1997 and charged with consuming alcohol as a minor (§ 2.d). Applicant admits each of the allegations, but denies he participated in the armed robbery and aggravated assault that is the subject of § 2.b. Answer; Tr. 9. A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive § E2.A10.1.1.

The Government's evidence and Applicant's admissions establish potentially disqualifying conditions under Guideline J. Applicant committed a single serious offense-possession of cocaine with the intent to distribute<sup>(2)</sup>-and multiple lesser offenses-use of marijuana and cocaine and consuming alcohol while a minor. DC E2.A10.1.2.2. Applicant did not participate in the October 2001 incident that led to his indictment for armed robbery, kidnapping, and aggravated assault. Applicant's criminal behavior is not recent-the last offense (his use of marijuana on the even of his sentencing) being almost three years ago (MC E2.A10.1.3.1) and there is clear evidence of successful rehabilitation (MC E2.A10.1.3.1). Applicant's offenses were committed when he was a young man. He has matured significantly in the last few years. He is open and honest about his past and accepts full responsibility for his transgressions. Applicant understands that future misconduct will not be tolerated and will most likely result in the revocation of his security clearance and termination from his employment. I find for Applicant on § 2.

## **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

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

Paragraph 2. Guideline J: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: For Applicant

## **DECISION**

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

James A. Young

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).
2. Applicant admitted he possessed cocaine with the intent to distribute even though he was only convicted of attempting to do so.