

DATE: May 7, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-04854

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 44-year-old employee of a government contractor, used marijuana on three occasions during a seven year period between 1994 and 2001. The last occasion of his use was in 1997 or 1998. Some use occurred while he held a security clearance. In a statement to an investigator at the time of the original application for a security clearance in August, 1991, Applicant stated that he had used marijuana but would not do so again. He now makes the same statement but it lacks credibility in light of his past conduct. Clearance is denied.

STATEMENT OF CASE

On October 7, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Information Within Industry*, 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 which 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated November 4, 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 December 30, 2003. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not do so. The case was assigned to, and received by, me on March 22, 2004.

FINDINGS OF FACT

Applicant admitted to all of the specific allegations in the SOR but stated qualifications or mitigating facts. The admitted facts are hereby incorporated as findings of fact.

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

Applicant, a 44-year-old employee of a government contractor, used marijuana on three occasions during a seven year period between 1994 and 2001. The last occasion of his use was in 1997 or 1998 according to his answer. Some of the use occurred while he held a security clearance.

In a statement to an investigator at the time of the original application for a security clearance in August, 1991, Applicant stated that he had used marijuana but would not do so again (Exh. 5). He now admits in his answer to having used in 1997 but again says in his answer to the SOR that he will not use again.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the 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. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

Under the Directive the Government has alleged a number of Disqualifying Conditions (DC) These concern drug involvement including drug abuse (E2.A8.1.2.1.) and illegal possession (E2.A8.1.2.2.) under Guideline H. The drug use (E2.A5.1.2.2) is also charged as an allegation under Guideline E as a Personal Conduct issue for engaging in activity that might render the person subject to blackmail. (E2.A5.1.2.4.)

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

The government has cited Disqualifying Condition (DC) 1 under Guideline H in the SOR concerning drug involvement as relevant to the proposed denial of a security clearance for the Applicant. Drug involvement is always a security concern because it raises questions about a person's willingness or ability to protect classified information. Any drug abuse is a condition that may be disqualifying. E2.A8.1.1.3 provides the following definition: "Drug abuse is the illegal use of a drug"

Mitigating Condition (MC) 2 might apply if there is "[a] demonstrated intent not to abuse any drugs in the future." In this matter, the Applicant expressed such intent in 1991 but again used marijuana in 1997 while holding a security clearance so his credibility to abstain now is dubious at best.

With regard to Guideline E Applicant has shown an unwillingness to comply with legal requirements regarding use of an illegal substance. No Mitigating Conditions were advanced by Applicant and none are applicable. The three uses over a seven year period the latest of which is over seven years old would likely, standing alone, not have been sufficient to deny a clearance. However, the fact that at least one occurred while holding a clearance and after an unequivocal statement to an investigator that he would not use drugs again, make it impossible to recommend in his favor.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is not clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline H: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

DECISION

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge