

DATE: March 10, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-05316

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant used marijuana with increasing frequency during his freshman year in college to as often as two to five times weekly by the end of his second semester. His involvement continued during a year off and after he enrolled at another college. From 1992 to 1996, he smoked marijuana from three to as many as six times weekly, and experimented with LSD, psilocybin, Valium, and codeine. With graduate study and work commitments, his use of marijuana gradually decreased to once per month with a last use in October 2002. Despite a professed enjoyment of marijuana's relaxing effects, he resolved to forego any future use after he learned in December 2002 that it was against Department of Defense policy. Clearance is granted.

STATEMENT OF THE CASE

On March 17, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the 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 the Applicant. ⁽¹⁾ DOHA recommended referral to an administrative judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on drug involvement (Guideline H).

On April 28, 2004, Applicant filed his response to the SOR allegations and requested a hearing. The case was assigned to me on July 22, 2004, and pursuant to notice of that date, a hearing was held on August 12, 2004. At the hearing, three government exhibits and one Applicant exhibit (an affidavit from his spouse) was entered into the record. Testimony was taken from Applicant and his supervisors, as reflected in a transcript received on September 7, 2004.

FINDINGS OF FACT

The government alleged as security disqualifying that Applicant used marijuana with varying frequency up to daily, from April 1990 to about October 2002 and purchased the drug to at least 1996; was arrested and fined approximately

\$200 for illegal possession of marijuana in 1993; and tried other drugs (LSD, Valium, hallucinogenic mushrooms, codeine) while an undergraduate in college before 1996. In his Answer, Applicant admitted the drug involvement as alleged, but maintained he has been abstinent since October 2002 and intends no future use or purchase. Applicant's admissions are accepted and incorporated as findings of fact. After a complete and thorough review of the evidence, I make the following additional findings:

Applicant is a 32-year-old senior member of the technical staff at a nonprofit federally funded research and development organization chartered by Congress. While pursuing his graduate education, Applicant was employed there as a part-time network and distributive systems engineer from June 1998. In January 2003, he was promoted to his present position, and in June 2003 he was hired on full time. He seeks a secret-level security clearance for his duties.

In late spring 1990, Applicant was offered marijuana by a friend he was visiting. Applicant took a few puffs out of curiosity. That fall, he began undergraduate studies at a state university. Exposed to marijuana in his dormitory, Applicant began to smoke the drug with his peers. By the end of his freshman year, Applicant was smoking marijuana two to five times per week and purchasing a quarter ounce of the drug once a week or every two weeks. Applicant paid for the drug with the proceeds of his father's life insurance policy that he inherited on his father's death.

Applicant quit school after that year and moved in with his father's former girlfriend. Applicant supported himself and his marijuana habit with the life insurance funds. In fall 1992, Applicant matriculated in a private college. Over the next four years, he lived on campus where he continued to smoke marijuana socially in his residence three to five or six times weekly. Applicant purchased a quarter ounce of marijuana weekly or once every two weeks for \$50.00. In December 1993, Applicant and his companion were stopped en route to visit Applicant's sister. A small amount of marijuana was found in Applicant's luggage and in the vehicle and both were arrested for illegal possession. Applicant paid a fine of less than \$200 for the offense.

Sometime before 1996, Applicant tried LSD and hallucinogenic mushrooms, two or three times each. He purchased the drugs at minimal cost. One time each, he also ingested prescription drugs (Valium and codeine) given to him by a fellow college student. He did not like the effects of any of these drugs so did not use them again. Applicant's use of illegal drugs did not adversely affect his academic performance, and he excelled in a college honors program. In June 1996, he earned his bachelor of science degree in computer science with a grade point average of 3.91 on a 4.0 scale.

In September 1996, Applicant began graduate studies in computer science in a new locale. He continued to smoke marijuana on occasion, as frequently as daily at first but tapering off in later years to once or twice a week. He obtained the drug from friends back home when he returned for holidays and special events. In June 1998, he began working part-time for his present employer while continuing to pursue his master's degree in computer science. In June 1999, he married a woman he met in college. She had smoked marijuana with him in college and their use of the drug continued after their marriage.

In June 1999, Applicant was awarded his Master of Science degree with a grade point average of 3.95 on a 4.0 scale. With his ongoing studies for a doctorate degree and work commitments, Applicant's use of marijuana decreased gradually to approximately once a month as of August 2002. Applicant continued to smoke marijuana occasionally as he enjoyed its relaxing effects. He did not see any problem with it as long as he did not report for work under the influence.

Needing a security clearance to install, maintain and observe the operation of software prototypes he had a part in developing, Applicant executed a security clearance application (SF 86) in August 2002. Applicant disclosed his arrest for misdemeanor possession of marijuana in December 1993, and reported use of the drug from April 15, 1990 to present, on a recreational (approximately monthly) basis. Applicant smoked marijuana on at least one occasion thereafter in October 2002.

On December 3, 2002, Applicant was interviewed by a Defense Security Service (DSS) special agent. Applicant detailed his involvement with illegal drugs, adding that he continued to smoke marijuana occasionally when offered it by a friend, with his latest use being in October 2002. He acknowledged the illegality of his drug involvement, but denied any prior knowledge that it was against government policy to use illegal drugs while holding a security clearance. Conversations with fellow employees around the lunch table had led him to believe candor about his drug use

was what was important as it would eliminate the potential for blackmail. Now aware that drug use is prohibited, Applicant told the agent he would not smoke marijuana in the future.

Realizing that illegal drug use could jeopardize his clearance, Applicant and his spouse resolved not to use any illegal drug in the future. In January 2003, Applicant was promoted at work to the position of senior member of the technical staff. With his career progressing and his studies for his doctorate in computer science taking most of his free time, Applicant did not have the time or inclination to use any illegal drugs. With thoughts of having a child and completing her second master's degree, Applicant's spouse abstained from illegal drugs as well. Applicant was last offered some marijuana in summer 2003 when visiting friends. Applicant declined to partake and he informed his friends that he no longer used marijuana because he was applying for a clearance and drug use was prohibited. In March 2004, Applicant successfully defended his dissertation. In April 2004, he and his spouse had their first child, and in May 2004 he earned his Ph.D., significant life events which have reinforced his resolve to remain drug free.

Applicant has not used marijuana in his present locale with anyone other than his spouse. His friends in graduate school did not use illicit drugs. Applicant and his spouse do not knowingly associate with anyone who still uses illegal drugs, with the possible exception of one high school friend who resides in a distant state and offered Applicant marijuana in summer 2003. Applicant has informed this friend as well as others that he no longer wants to be involved with drugs.

Applicant has been a key contributor at work, especially in his work on a translingual instant messaging program. The high quality of his work and productivity on the job earned him the January 2003 promotion as well as several awards, including a company technology program innovation award. Made aware by Applicant of his past drug use, his department head and his direct supervisor endorse the grant of his clearance, as they have seen no evidence of Applicant being under the influence of any mood-altering substance at work and trust his representation that his drug use is in the past.

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

Having considered the evidence of record in light of the appropriate legal precepts and adjudicative guidelines, and having assessed the credibility of those who testified, I conclude the government established its case under guideline H, but the Applicant has mitigated the concerns by his abstinence from illegal drugs since October 2002, his intent to not use such illicit substances in the future, and the absence of any threat to that resolve since summer 2003.

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. Marijuana played a significant role in Applicant's recreational activity as a college undergraduate. He smoked it regularly, at times daily, with his peers. He

also tried the hallucinogens LSD and psilocybin (hallucinogenic mushrooms) two to three times each, and ingested at least one time each Valium and codeine not prescribed for him. Applicant purchased marijuana and the hallucinogens for his personal consumption. Disqualifying conditions a. *Any drug abuse*, and b. *Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*, of guideline H apply.

Even if Applicant was unaware that the off-duty, recreational use of marijuana is contrary to Department of Defense policy, he clearly knew his conduct was illegal. It is also evident that he disagreed with the laws concerning the use of marijuana:

Well, for one thing I was younger and less concerned with irresponsibility and the consequences of my actions. My respect for authority and laws that I didn't think made sense at the time was much less. As I've grown up, not only have I learned there are consequences for my actions and that I need to behave in more responsible ways, I have a great deal more respect for authority as I've come to understand its role in society and for the individual and myself. And I've come to realize that while I may disagree with laws, that does not make me exempt from them.

(Tr. 66) As pointed out by Department Counsel at the hearing, the DOHA Appeal Board held in ISCR 99-0019, decided November 22, 1999:

A person who engages in a pattern of illegal activity over a period of years and believes such conduct . . . should be legal is, as a matter of common sense, more at risk to repeat that conduct than a person who sincerely acknowledges the wrongfulness of the conduct, or a person who believes such conduct is not wrongful but who nevertheless consistently refrains from the conduct because it is illegal.

Applicant submits in mitigation that his illegal drug involvement is not recent (*see MC a., The drug involvement was not recent*) and he does not intend to use any illegal drug in the future (*see MC c. A demonstrated intent not to abuse any drugs in the future*). His abuse of hallucinogens and prescription drugs was experimental, in the context of socializing with college peers, and not enjoyed by him. There is little likelihood, if any, Applicant will abuse any of these substances in the future. However, Applicant bears a particularly heavy burden to overcome a long history of marijuana abuse that continued to October 2002, after he moved to a distant state for graduate school and began working for his present employer.

There is no evidence that Applicant engaged in drug abuse as defined in the Directive ("the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction") or possessed it since October 2002, although he was offered marijuana by friends in summer 2003. Yet, his abstinence for some 21 months is short when compared with his 11 plus years of marijuana abuse. Applicant has also not terminated his friendships with those individuals from back home who supplied him with marijuana in the past. However, he has informed them he is no longer using and, with maturation and parenthood, marijuana has become a "non issue" with these friends as well, with the possible exception of the high school friend whom he visited while on a business trip in summer 2003. To his credit, Applicant declined to use marijuana when offered it by this high school friend. The desire to retain his employment and especially the birth of his first child serve as significant deterrents to any future drug abuse. Applicant testified credibly to wanting to be the best possible role model for his son, and that he would be "very disappointed if [his] son were to repeat [his] mistakes." (Tr. 71) Applicant no longer has a cavalier attitude toward the laws prohibiting marijuana use. Applicant's supervisors, who have experienced him as a dedicated, honest professional, do not doubt the sincerity of Applicant's intent to, or his ability to, maintain a drug free lifestyle. Mindful that security clearance decisions are not designed to punish individuals for past wrongdoing, but instead involve an assessment of future risk, I am persuaded based on the evidence of record that Applicant has put his drug use behind him. SOR subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., and 1.g. are resolved in his favor.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline H: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

DECISION

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

Elizabeth M. Matchinski

Administrative Judge

1. The SOR was issued under the authority of Executive Order 10865 (as amended by Executive Orders 10909, 11328, and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4).