

DATE: July 28, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-05647

ECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 41-year-old employee of a defense contractor who has a history of wrongfully using marijuana. He falsely denied using marijuana on his Security Clearance Applications (SF 86) submitted in 1981, 1984, 1988, 1993, and in a security clearance interview in 1994. He falsely reported the dates of his marijuana use on his SF 86 in 2000. Applicant failed to mitigate the security concerns arising from his drug abuse and false official statements. Clearance is denied.

STATEMENT OF THE CASE

Pursuant to Executive Order 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 (the "Directive"), the Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On February 13, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision: security concerns raised under Guideline E (Personal Conduct), Guideline H (Drug Involvement), Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on March 5, 2004, and admitted all the allegations. He elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on May 25, 2004. Department Counsel provided a complete copy of the file of relevant material (FORM) to Applicant, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on June 1, 2004, and provided additional materials for consideration on July 6, 2004. The case was assigned to me on 22 July 2004.

FINDINGS OF FACT

Applicant admitted all of the factual allegations contained in the SOR. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 41 years old and is married. He seeks renewal of his security clearance.

Applicant began using marijuana in 1975, just before entering high school, when he smoked marijuana five or six times during a two-week summer vacation. Item 3, Applicant's Answer, dated March 5, 1994, at 1; Item 5, Statement of Applicant, dated March 29, 2002, at 1. Applicant next used marijuana at a dance during his junior year in high school. Item 5, *supra*, at 1. He smoked marijuana on three to five additional occasions while in high school. *Id.*

Applicant applied for a job with a defense contractor in July 1981. Item 3, *supra*, at 2; Item 5, *supra*, at 2. He lied about his prior use of marijuana on his security clearance application, because he feared that answering "yes" would eliminate him from consideration for the position. Item 3, *supra*, at 2. Applicant subsequently received a security clearance. *Id.*

In 1984, Applicant submitted another security clearance application. *Id.* at 1. Again he falsely denied his prior use of marijuana. *Id.*

Applicant smoked marijuana socially while he was in college (Item 5, *supra*, at 1), between 1986 and 1990. Item 4, Security Clearance Application, dated September 27, 2000 at 2. In 1988 he submitted another security clearance application, and again falsely denied any wrongful use of marijuana. Item 3, *supra*, at 1.

In the summer of 1989, the local police arrested Applicant for drunk driving. Item 4, *supra*, , at 6; Item 5, *supra* at 2. He pled guilty to driving under the influence of alcohol. Item 5, *supra* at 2. He paid a fine and completed court-ordered alcohol abuse counseling and group therapy. *Id.* at 3. Applicant reported the arrest and conviction to his security representative. *Id.*

Applicant submitted a fourth security clearance application in 1993, and again falsely denied any use of marijuana. Item 3, *supra*, at 1. In 1994, an investigator interviewed Applicant concerning his security clearance application. *Id.* He also lied to the investigator about his prior drug use. *Id.* Applicant was awarded a Top Secret clearance. Item 4, *supra*, at 8.

In 1997, Applicant left the employment of the defense contractor. Item 3, *supra*, at 2. He worked for an aerospace corporation for about three and one-half years in a position that did not require a security clearance. *Id.*

Applicant continued to smoke marijuana sporadically during this time. Item 3, *supra*, at 1; Item 5, *supra*, at 2. In January, 2000, civilian police arrested Applicant for assaulting his wife. Item 4, *supra*, at 7; Item 5, *supra* at 3-4; Item 6, Sheriff's Department Record, dated January 11, 2000, at 7. Applicant admitted to the police that he used marijuana that day. Item 3, *supra*, at 2; Item 6, *supra*, at 7. Applicant and his wife sought and received marital counseling. Item 5, *supra*, at 4. Authorities later dropped the domestic violence charge. Item 3, *supra*, at 2; Item 6, *supra*, at 9.

In July 2000, Applicant returned to employment with the defense contractor, and completed another security clearance application. Item 3, *supra*, at 2; Item 4, *supra*; Item 5, *supra*, at 3. On the security clearance application, he reported his arrest for spouse abuse in January 2000, and that the charges were dropped. Item 4, *supra*, at 7. He also reported using marijuana less than 20 times between January 1, 1980 and December 1, 1999. *Id.* That time frame does not accurately reflect the extent of his marijuana use. Item 3, *supra*, at 1.

In 2002, security clearance investigators interviewed Applicant. Item 3, *supra*, at 2. He prepared a statement dated May 29, 2002, admitting his marijuana use between 1975 and January 2000 and his false official statements in his security clearance applications. Item 5, *supra*, at 1-2.

POLICIES

In Executive Order 12968, *Access to Classified Information* § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants

access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

In order to be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline E - Personal Conduct: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. Directive, ¶ E2.A5.1.1.

Guideline H - 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. Directive, ¶ E2.A8.1.1.

Guideline J - Criminal Conduct: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. Directive, ¶ E2.A10.1.1.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 pertinent 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. *Id.* Initially, the Government must establish, by substantial evidence, conditions which disqualify, or may disqualify, the applicant from being eligible for access to classified information. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. 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 (App. Bd. Dec. 19, 2002). "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.

CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline E, Personal Conduct.

Applicant repeatedly denied any wrongful drug use on security clearance applications in 1981, 1984, 1988, and 1993. These statements were knowingly false. When he admitted his drug abuse on his security clearance application in 2000, he did not accurately report the correct time frame for his misconduct. This is substantial evidence of a disqualifying condition, specifically, ¶ E2.A5.1.2.2, "the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . . used to conduct investigations . . . [or] determine security clearance eligibility or trustworthiness" Applicant also falsely denied prior marijuana use in a security clearance interview in 1994. This is substantial evidence of a second disqualifying condition, specifically ¶ E2.A5.1.2.3, "Deliberately providing false or misleading information concerning relevant and material matters to an investigator . . . in connection with a personnel security or trustworthiness determination." Finally, this misconduct also constitutes a pattern of dishonesty, which is a disqualifying condition under ¶ E2.A5.1.2.5. The evidence presented in this case raises concerns

about Applicant's judgment, trustworthiness, reliability, candor, honesty, and willingness to comply with rules and regulations.

Applicant asserts he is a trustworthy employee who has an unblemished record of properly handling classified information. He provided letters of recommendation from managers and co-workers attesting to his trustworthiness and integrity. It is a mitigating condition that the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily. Directive, ¶ E2.A5.1.3.2. Applicant does not meet the requirements of this mitigating condition, however. His false official statements were not isolated incidents, rather they continued for a considerable period of time, including his most recent clearance application. While he reported some information about his drug abuse voluntarily, it appears that was prompted by a recognition of the need to report his related arrest for spouse abuse. I considered the number of times the Applicant lied in his security clearance applications, the materiality of the omitted facts, and his continued use of marijuana even after obtaining a clearance through false statements. I also considered Applicant's delay in providing truthful information, and that his eventual admissions were incomplete. I find Applicant has failed to mitigate the security concerns arising from his false official statements.

Guideline H, Drug Involvement.

Applicant's admissions and the government's documentary matters constitute substantial evidence of two disqualifying conditions under Guideline H of the Directive. Specifically, under ¶ E2.A8.1.2.1, any drug abuse is potentially disqualifying. Furthermore, under ¶ E2.A8.1.2.5, "recent drug involvement, especially following the granting of a security clearance . . . will almost invariably result in an unfavorable determination."

The Directive sets out conditions that could mitigate security concerns arising from drug involvement. One potentially mitigating condition is set out in ¶ E2.A8.1.3.4: "Satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional." Applicant reports that he and his wife attended about ten sessions of marital counseling following his January 2000 arrest, and that his marijuana use was one of the issues discussed. He submits that this counseling has helped him "put the issue behind him." However, it does not appear that this marital counseling was a prescribed drug treatment program, with rehabilitation or aftercare requirements, nor is there any indication that Applicant has a favorable prognosis by a credentialed medical professional. Applicant has not met the terms of this mitigating condition.

Another potentially mitigating condition is that the subject demonstrates an intent not to abuse any drugs in the future. Directive, ¶ E2.A8.1.3.3. Applicant states that he will not use marijuana or other illegal drugs ever again. Unfortunately, Applicant's credibility is severely damaged by his repeated false official statements about his drug abuse over the last two decades. Considering the extent of his drug abuse, especially his drug use after receiving a security clearance, and the length of time it continued, I find Applicant has failed to mitigate the security concerns raised by his involvement with marijuana.

Guideline J, Criminal Conduct.

Applicant's misrepresentations on his security clearance applications and during his interview were false official statements in violation of the federal criminal code, specifically 18 U.S.C. § 1001. Each false statement constitutes a serious crime under ¶ E2.A10.1.2.2 of the Directive.

I find no mitigating circumstances. At least one false statement was recent, ¶ E2.A10.1.3.1, these were not isolated incidents, ¶ E2.A10.1.3.2, no one pressured or coerced Applicant into making these false statements, ¶ E2.A10.1.3.3, and the false statements were made voluntarily, ¶ E2.A10.1.3.4. I find Applicant has not mitigated the security concerns arising from his criminal conduct.

For these reasons, I find that Applicant is not eligible for access to classified information.

FORMAL FINDINGS

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

Paragraph 1. Guideline E: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Paragraph 2. Guideline H: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

DECISION

In light of all of the circumstances 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.

Michael J. Breslin

Administrative Judge