

DATE: January 5, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-05918

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Kathryn Trowbridge, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 33-year-old software engineer who is employed by a defense contractor. From 1989 to 1995, he used marijuana approximately 3-4 times a year. From 1995 to January 2001, he illegally used numerous prescription drugs that were available at social gatherings. During this period, for recreation, he also tried other illegal drugs. Applicant finally decided he needed to eliminate drugs from his life, and made a conscious commitment to do so. Applicant has been drug-free since January 2001, and vowed never to use drugs again. Applicant has mitigated the security concerns caused by his drug history. Clearance is granted.

STATEMENT OF CASE

On April 13, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline H, drug involvement. Applicant submitted a response to the SOR, dated April 23, 2004, and requested a hearing. In his SOR response, Applicant admitted all the allegations contained in the SOR, except he denied allegation 1.b. In his response, Applicant also provided explanations in an effort to extenuate and mitigate the security concerns raised by the allegations.

The case was assigned to me on November 29, 2004. A notice of hearing was issued on November 27, 2004, scheduling the hearing for December 15, 2004. The hearing was conducted as scheduled. The government submitted three exhibits that were marked as Government Exhibits (GE) 1-3. They were admitted without objection into the record. The Applicant testified on his own behalf, had one witness testify, and submitted three exhibits that were marked as Applicant's Exhibits (AE) 1-3. All of Applicant's exhibits were admitted without objection. The transcript was received on January 4, 2005.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 33-year-old software engineer who has been employed by a defense contractor since 2002. Applicant earned three degrees, two bachelor of science degrees and one masters degree, completing his college education in 2002. Applicant is engaged to be married in 2005. Applicant was an inactive reserve member of the Army for three years, and received an uncharacterized discharged, because the Army was unable to fulfill their contractual commitment to Applicant. Applicant used marijuana during the period of 1989 to 1995. His use was on an infrequent basis, approximately 3-4 times a year with friends, at social gatherings. Applicant did not go out of his way to use drugs, rather he used them if they were available. Applicant does not think he used drugs in 1991 or 1992, but can not recall whether he did or did not, with any certainty. From January 1995 to January 2001, Applicant used, with varying frequency, marijuana and prescription drugs, to include: Codeine, Soma, Xanax, Valium, Percoset, Percodan, and Vicodin. Applicant used Ecstasy at least two times from January 1999 to December 1999; cocaine at least two times from September 1996 to at least October 1997; and LSD at least once from June 1996 to August 1996.

Applicant has not used any illegal drugs since January 1, 2001. Applicant decided on this specific date, even though he knew he actually did not use drugs since the fall of 2000, but to be certain, he extended the period of time to beyond the time of when he actually may have used illegal drugs, so he could be completely honest. Applicant made a conscious decision in the fall of 2000, to stop using illegal drugs. Applicant knew that he was completing his education and it was time to get his life in order and he did not want his drugs use to hold him back in any employment opportunities he might be offered. Applicant decided his future was dependent on him behaving himself and being a "law abiding member of society." Applicant did not want drugs to be an issue in his future.

Applicant's father uses marijuana. Applicant's parents were divorced when he was 3 years old, due to his father's drug use. Applicant had no contact with father from approximately 1974 to 1995. Applicant resumed contact with his father and they may visit each other once or twice a year. Applicant's father lives in a distant state from him. Applicant advised his father that he is not permitted to use drugs around him and he is not permitted to visit him, if he wants to use drugs around him. Applicant's father has respected his position. Applicant no longer associates with any of the people he used drugs with while in college. None of his current friends use drugs.

Applicant was anti-drug use in high school because of his parents divorce. While at college he was convinced by a teaching assistant that drugs were okay and Applicant used them on a recreational basis.

Applicant is engaged to be married in 2005. He and his fiancée have been living together since October 2003. She does not use drugs and during the time Applicant and his fiancée lived together he did not use drugs. She is against the use of illegal drugs and believes those who use them are stupid and a waste. There are no illegal drugs in their house. Applicant no longer wants to feel the effects of drugs; he no longer wants the risk involved in using drugs; he does not want to break the law; and he wants to ensure his mental faculties are not clouded by drug use. Applicant is not proud of his past drug use, but is proud that he has not used any illegal drugs for almost four years. Applicant has matured and made a conscious effort to change his behavior. Applicant is remorseful and regrets his drug use. Applicant is adamant that he will never use illegal drugs again, regardless of the results of his hearing.

Applicant is viewed by his coworkers as conscientious, professional, responsible, and loyal. Applicant has volunteered to be the designated driver at a social gathering and drinks responsibly or refrains from drinking, if he has to drive home after an engagement.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are Disqualifying Conditions (DC) and Mitigating Conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation

of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline H, pertaining to drug involvement, and its respective DC and MC, is most relevant in this case.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. (2) The government has the burden of proving controverted facts. (3) The burden of proof is something less than a preponderance of evidence, (4) although the government is required to present substantial evidence to meet its burden of proof. (5) Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. (6) Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her. (7) Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. (8)

No one has a right to a security clearance (9) and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." (10) Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. (11) The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. (12) 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

Under Guideline H, illegal drug involvement may raise a security concern based on the improper and illegal involvement with drugs. Improper or illegal involvement with drugs is relevant to the security clearance process for several reasons: (1) drug abuse indicates an unwillingness or inability to abide by the law; (2) drug abuse weakens judgment; (3) some types of drug use reflect a tendency toward irresponsible or high risk behavior; (4) users of illegal drugs may be susceptible to blackmail, especially if exposure of drug use could cost them their job; (5) drug abuse or dependence often indicates the presence of broad emotional or personality problems that are security concerns; and (6) drug use may cause financial problems, leading to criminal activity to finance a drug habit.

Based on all the evidence, under Guideline H, I find DC 1: *Any drug abuse*, and DC 2: *Illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution*, apply in this case. I have considered all the mitigating conditions under Guideline H, and specifically considered MC 1: *The drug involvement was not recent*, and MC 3: *A demonstrated intent not to abuse any drugs in the future*, and conclude both apply.

Applicant readily admits his past drug use. He has abstained from all illegal drug use since at least January 2001, a period of almost four years. Applicant has matured, and made a conscious decision that to succeed in the future he must eliminate drugs from his life, and has done so. Applicant's exposure to illegal drugs by his father is mitigated by Applicant's ultimatum to his father that he may not visit Applicant, if he wants to use drugs during his visit.

In all adjudications the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes we should view a person by the totality of their acts, omissions, motivations and various other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence in this case, including Applicant's appearance, demeanor and credibility while testifying. I have also considered him under the "whole person" concept. I am satisfied that Applicant presented sufficient evidence of refutation, extenuation, and mitigation to overcome the case against him. Accordingly, Guideline

H is decided for Applicant.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

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

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. Clearance is granted.

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Section E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p.3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p.2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, Section E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Section E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id.* at 531.
11. *Egan*, Executive Order 10865, and the Directive.
12. Executive Order. 10865. § 7.