

DATE: May 27, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-25772

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant used marijuana at least 20 times from March 1996 to June 2003. He continued to use the drug after the birth of his two children, and last used the illegal substance after submitting his security clearance application. He was arrested and convicted for drinking in public shortly after his last admitted use of marijuana. Applicant has not mitigated the security concerns pertaining to his drug involvement and questionable judgment. Clearance is denied.

STATEMENT OF THE CASE

On January 14, 2005, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on January 26, 2005. The SOR alleges security concerns under Guideline H (Drug Involvement) and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on February 7, 2005. He admitted the allegations under Guideline H, and admitted two and denied one of the allegations under Guideline E. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the government's written case on March 7, 2005. Applicant received a complete file of relevant material (FORM) on March 18, 2005, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. On April 14, 2005, Applicant responded to the FORM providing reasons to grant him a security clearance. The case was assigned to me on May 10, 2005.

FINDINGS OF FACT

Applicant is a 34-year-old business development manager for a defense contractor. He is a college graduate and married with two children.⁽¹⁾

Applicant admitted using marijuana at least 20 times from March 1996 to June 2003. In March 1996, Applicant had graduated from college, was married, and employed full-time. He continued to use the illegal substance after the birth of his two children in 1997 and 1999. He did not buy or sell marijuana but used it for recreational reasons when provided by friends and acquaintances. He never used it at work or with co-workers.⁽²⁾ Applicant submitted his security clearance application on March 13, 2003. He admitted using marijuana in June 2003.⁽³⁾

Applicant was working at an event for his employer in August 2003 where alcoholic beverages were served. On the way home that evening, he stopped in a park near his house to smoke a cigarette. He was questioned by police and arrested for drinking in public. Applicant claimed he helped clean up after the event and accidentally spilled alcohol on his shirt. He was found guilty and payed a \$25 fine.⁽⁴⁾ Applicant incorrectly listed the date of this incident on his security clearance application as August 11, 2000, resulting in allegation 2.a. in the SOR. The correct date of the arrest was August 11, 2003.⁽⁵⁾

Applicant submitted 22 reasons why he should be granted a security clearance as part of the "whole person" concept. These reasons include his civic and church activities, his athletic accomplishments, his employment record, his employment accomplishments, and his loyalty to the United States. He apologized for his past drug involvement and noted his intent to reform his past drug use.⁽⁶⁾

POLICIES

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."⁽⁷⁾ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.⁽⁸⁾

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

"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." An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽⁹⁾ An administrative judge should consider: (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 applicant'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 of recurrence.⁽¹⁰⁾

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.⁽¹¹⁾ 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.

Initially, the government must present evidence to establish controverted facts in the SOR that disqualify or may

disqualify the Applicant from being eligible for access to classified information. ⁽¹²⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts. ⁽¹³⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ⁽¹⁴⁾ "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ⁽¹⁵⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." ⁽¹⁶⁾

Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline H - Drug Involvement: A security concern exists because improper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependency may impair social or occupational functioning which increases the risk of an unauthorized disclosure of classified information.

Guideline E - Personal Conduct: A security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information.

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

CONCLUSIONS

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

The government has established its case under Guideline H. Applicant's admitted use of marijuana from March 1996 to June 2003 brings this matter under Drug Involvement Disqualifying Condition E2.A8.1.2.2 (*any drug abuse*). Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction. ⁽¹⁷⁾ Marijuana is a drug listed in the Controlled Substance Act of 1970 and an illegal drug. ⁽¹⁸⁾ Applicant's use of marijuana is drug abuse and I conclude the above disqualifying condition has been established.

The Drug Involvement Mitigating Conditions to consider for Applicant are E2.A8.1.3.1 (*the drug involvement was not recent*); E2.A8.1.3.2 (*the drug involvement was an isolated or aberrational event*); and E2.A8.1.3.3 (*a demonstrated intent not to abuse any drugs in the future*). The last use of marijuana admitted by Applicant was in June 2003. While there is no bright line rule on the time considered recent, ⁽¹⁹⁾ the use of an illegal drug slightly less than two years ago is recent. Since Applicant admitted to using marijuana a number of times over a number of years, his use was not isolated or aberrational. Applicant does not establish a demonstrated intent to not abuse drugs in the future. He states he has a sincere intent to reform and that he is not proud of his past conduct relating to drug abuse. However, Applicant was 26 years old and married, when by his own admission, he first used marijuana. He continued to use the drug after his two children were born and after submitting his security clearance application knowing his use of the drug could affect his security clearance. A mere statement of an intent to reform is not a demonstrated intent not to use drugs in the future. His statement of intent does not overcome his history of using drugs while married, as the father of children, and with a security clearance action pending. I conclude Applicant has not demonstrated an intent to not use drugs in the future and has not mitigated the security concerns for his drug involvement.

The government has established its case under Guideline E. Applicant's arrest and conviction for drinking in public and his use of marijuana after submitting a security clearance application brings his conduct under Personal Conduct Disqualifying Condition E2.A5.1.2.2 (*reliable, unfavorable information . . .*); and E2.A5.1.2.5 (*a pattern of dishonesty or rule violations. . .*). Applicant's drug involvement and alcohol related arrest is unfavorable information and is reliable since it is based on the Applicant's own admissions. Applicant's continued use of marijuana and public drinking shows a pattern of rules violation. While he provides an explanation of innocent conduct concerning public drinking, Applicant

did appear in court, was found guilty, and fined. His actions happened within two months of his last admitted use of marijuana and adds to the pattern of rules violation. I conclude the above disqualifying conditions have been established.

The only Personal Conduct Mitigating Condition pertinent to Applicant's situation is E2.A5.1.3.1 (*the information was . . . not pertinent to a determination of judgment, trustworthiness, or reliability*). Public drinking and use of marijuana after submitting a security clearance application are conduct involving questionable judgment, untrustworthiness, unreliability, and shows an unwillingness to comply with rules and regulations. Applicant's repeated use of marijuana affects a determination as to his judgment, trustworthiness, or reliability. The drinking in public is an isolated incident and a minor offense. However, this offense, when considered with the continued use of marijuana, is pertinent to determine judgment, trustworthiness, and reliability. Applicant has not mitigated the security concerns under Guideline E.

I carefully considered all of the circumstances in light of the "whole person" concept. The underlying conduct is the same for both Guidelines except for the addition of the minor drinking in public offense under Guideline E. The Guideline E violations added little to my determination of Applicant's security worthiness, since the main security concern was his drug abuse and it was considered under Guideline H. I considered all extenuation factors Applicant raised in his April 14, 2005, response to the FORM under the "whole person" concept. I conclude Applicant is not eligible for access to classified information.

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: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

DECISION

In light of all of the circumstances presented in the record of this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Thomas M. Crean

Administrative Judge

1. FORM, Item 4 (Security clearance application, dated Mar. 13, 2003).
2. FORM, Item 5 (Applicant's statement, dated Oct. 22, 2003); FORM, Item 3 (Applicant's answer to the SOR, dated Feb. 7, 2005).
3. *Id.*
4. FORM, Item 5, (Applicant's statement, dated Oct. 22, 2003), at 3.

5. Because of the erroneous date in the security clearance application, I find for Applicant on allegation 2.a.
6. Applicant's answer to the FORM (Letter, dated Apr. 15, 2005).
7. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
8. Directive ¶ E2.2.1.
9. *Id.*
10. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
11. *See* Exec. Or. 10865 § 7.
12. Directive ¶ E3.1.14.
13. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
14. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
15. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
16. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.
17. Directive ¶ E2.A8.1.1.3.
18. Directive ¶ E2.A8.1.1.2.1.
19. ISCR Case No. 99-0018 (App. Bd. Apr. 11, 2000).