

DATE: October 13, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-07130

ECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant sporadically abused marijuana from 1986 to 2003. He tested positive for marijuana in a random drug screening in May 2003. The lengthy period of Applicant's drug abuse and the recency of his last use are too much for Applicant to overcome and meet his ultimate burden of persuasion. Clearance is denied.

STATEMENT OF THE CASE

On June 14, 2004 the Department of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline H for drug involvement.

In a sworn answer dated June 28, 2004, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the government's case on August 6, 2004. A complete copy of the file of relevant material (FORM) was received by Applicant on August 16, 2004. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM and provided additional material dated September 8, 2004. Department Counsel had no objections. The case was assigned to me on September 21, 2004.

FINDINGS OF FACT

Applicant has admitted the factual allegations in subparagraphs 1.a., 1.b. and 1.c. pertaining to Guideline H. Those admissions are incorporated herein as findings of fact.

After a complete and thorough review of the record evidence as a whole, I find it sufficient to establish the conduct alleged in the SOR. I make the following additional findings of fact:

Applicant is a 38-year-old employee of a defense contractor. He has been married since 1986. He attended college from 1996 to 1999 and resumed his attendance in June 2003. Applicant was employed from 1995 to 2003 in commercial industry. He has been employed by a federal contractor since July 2003. Applicant's employment performance evaluations from 2000 to 2004 are excellent. Applicant has never held a security clearance.

Applicant used marijuana sporadically from 1986 to 2003, a seventeen-year period. He used marijuana twice while in a foreign country, where it was legal. Applicant used marijuana in the mid-eighties, with friends, while attending school. Applicant continued to use marijuana from 1996 through 2003 at social gatherings with friends. Applicant claims he felt euphoric after he used marijuana, except the last time he felt paranoid.

Applicant tested positive for marijuana during a random urinalysis by his employer in May 2003. Applicant's employer required him to undergo an evaluation in a drug treatment program.

Applicant entered a six-week program and was diagnosed with *Cannabis Abuse*.⁽²⁾ Applicant completed all requirements of the course in June 2003. Applicant was subject to urinalysis testing during this period and all results were negative. No aftercare was recommended and his prognosis was very favorable. Applicant had a follow-up evaluation in August 2004. It was determined that Applicant had made some behavior and lifestyle changes and appears to have remained drug free.

Since Applicant's positive urinalysis he has abstained from using illegal drugs. Applicant no longer associates with anyone who uses drugs. Applicant does not intend to use illegal drugs in the future.

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 drugs is most relevant in this case. Under Guideline H, illegal drug involvement may raise a security concern. Such conduct 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; or (6) drug use may cause financial problems, leading to criminal activity to finance a drug habit.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest for an applicant to grant or continue a security clearance for an applicant.⁽³⁾ The government has the burden of proving controverted facts.⁽⁴⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁽⁵⁾ although the government is required to present substantial evidence to meet its burden of proof.⁽⁶⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁷⁾ 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 him.⁽⁸⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

No one has a right to a security clearance⁽¹⁰⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹¹⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹²⁾

CONCLUSIONS

Applicant used marijuana as a college student and as a mature adult. He was randomly tested by his employer in May 2003 for drug use and tested positive for marijuana. He last used marijuana, while employed with commercial industry in April 2003. He was required by his employer to be evaluated for substance abuse. Disqualifying condition (DC) 1: *Any drug abuse*; and DC 4: *Evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program*, apply in this case.

I have specifically considered all mitigating conditions, under Guideline H. I conclude that MC 1: *The drug involvement was not recent*, and MC 2: *The drug involvement was an isolated or aberrational event*, do not apply. Applicant was 37 years old, aware of the random drug testing policy of his company when he chose to take the risk of using an illegal drug. His willingness to use drugs in violation of the law and company policy raises concerns regarding his judgment and trustworthiness. Applicant has used drugs over a 17-year period. The most recent use was in April 2003. The recency and frequency of the drug use, the number of years that it spanned and the age when Applicant last used drugs does not make his drug involvement an isolated or aberrational event.

I have also specifically considered MC 3: *A demonstrated intent not to abuse any drugs in the future*, and MC 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*, and conclude they apply. Since testing positive for illegal use of marijuana in May 2003, Applicant appears to have made an earnest effort to refrain from using drugs and specifically intends not to use them in the future. He has been diagnosed for cannabis abuse and has completed a six-week educational treatment program. His prognosis for the future is favorable. However, Applicant's commitment to remaining drug free was only after testing positive and understanding the serious ramifications to his future. Although a worthy and important first step, it does not outweigh the recency of his drug abuse and the extended period of time that illegal drugs have been an acceptable part of his life. I do not find MC 3 and MC 4 outweigh DC 1 and DC 4. Guideline H is decided against Applicant.

Considering all relevant and material facts and circumstances present here, the whole person concept, the applicable disqualifying and mitigating conditions, and other appropriate factors and guidelines in the Directive, I find against Applicant as to SOR allegations 1.a., 1.b. and 1.c.. I also find that Applicant has failed to overcome the case against him and satisfy his ultimate burden of persuasion.

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 THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

DECISION

In light of all 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.

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. *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition-Text Revised (DSM-IV-TR), defines Cannabis Abuse as: "Periodic cannabis use and intoxication can interfere with performance at work or school and may be physically hazardous in situations such as driving a car. Legal problems may occur as a consequence of arrest for cannabis possession. There may be arguments with spouses or parents over the possession of cannabis in the home or its use in the presence of children."

3. ISCR Case No. 96-0277 (July 11,1997) at p.2.

4. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, section E3.1.14.

5. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

6. ISCR Case No. 01-20700 (December 19,2002) at p. 3 (citations omitted).

7. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

8. ISCR Case No. 94-1075 (August 10,1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

9. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

10. *Egan*, 484 U.S. at 528, 531.

11. *Id.* at 531.

12. *Egan*, Executive Order 10865, and the Directive.