

DATE: July 28, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-07782

**DECISION OF ADMINISTRATIVE JUDGE**

**MATTHEW E. MALONE**

**APPEARANCES**

**FOR GOVERNMENT**

Juan Rivera, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Around the time he was first granted a security clearance in 1987, Applicant began using marijuana with varying frequency. He first disclosed his drug use in his most recent security clearance questionnaire (SF 86) in March 2003, and last used the drug after being interviewed by investigators in late 2003. He has failed to overcome the adverse security implications of 16 years of illegal drug involvement while holding a security clearance. Clearance is denied.

**STATEMENT OF THE CASE**

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding<sup>(1)</sup> it is clearly consistent with the national interest to give Applicant a security clearance. On September 8, 2004, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline H (illegal drugs) and Guideline E (personal conduct). Applicant timely answered the SOR (Answer), admitted all of the allegations therein, and requested a hearing.

On March 10, 2005, I convened a hearing at which the government presented four exhibits (GE 1 - GE 4) to support the SOR. In response, Applicant testified and presented the testimony of one witness. DOHA received the transcript (Tr) on January 21, 2005. The issuance of this decision was delayed due to an unusually large caseload.

**FINDINGS OF FACT**

Applicant's admissions through his Answer are entered herein as facts. After a thorough review of the pleadings, transcript, and exhibits, I also find the following:

Applicant is 42 years old and has worked as a senior technical support specialist for a major defense contractor since 1985. He is a high school graduate with some college course work to his credit.

In 1987, Applicant received a security clearance required by the contracts he was assigned to. He has held that clearance to date. Around this same time, at age 24, he began dating a woman who had a significant substance abuse problem. Applicant began to abuse alcohol with her and to use marijuana. He eventually broke up with her and, with some counseling assistance, stopped drinking. However, he continued to use marijuana regularly reasoning that at least he was not drinking.

Applicant has known from the outset that his drug use was illegal and kept his conduct hidden from everyone at work. As he neared age 40, Applicant began to take stock of his life and found that he was embarrassed by the fact he had few outside interests that did not include marijuana, and he resolved to quit. However, he had difficulty disciplining himself to stop. When his clearance came up for review in early 2003, he decided it would be therapeutic if he finally disclosed his drug use on his SF 86. Even after doing so in March 2003, he continued to use marijuana until December 2003, when he was interviewed by a Defense Security Service (DSS) agent.

Applicant still struggles with making changes in his lifestyle supportive of his efforts to abstain from drug use. He has sought advice from a social worker about how to broaden his interests and develop a new circle of friends, but has had mixed results. He still does not want his co-workers to know he used marijuana.

The only person at work who knows about Applicant's drug use is the facility security officer (FSO) who testified for Applicant at his hearing. He characterized Applicant as a valued, reliable employee entrusted with various types of sensitive equipment and access to sensitive systems.

### **POLICIES**

The Directive sets forth adjudicative guidelines<sup>(2)</sup> to be considered in evaluating an Applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are Guideline H (illegal drugs) and Guideline E (personal conduct).

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>(3)</sup> for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for the Applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it establishes that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.<sup>(4)</sup> A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>(5)</sup>

### **CONCLUSIONS**

Under Guideline H, 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. Such conduct may also be criminal and indicative of a disregard for rules and regulations used to protect national interests.<sup>(6)</sup>

In this instance, the government has produced sufficient information through its exhibits and Applicant's admissions to

support the preliminary decision as expressed in the SOR that Applicant's security clearance should be revoked. Available information shows Applicant used illegal drugs for about 16 years starting when he was in his mid-20's. (SOR ¶1.a) He has also purchased small quantities of marijuana for personal use. (SOR ¶1.b) Throughout the entire time he used marijuana, Applicant also possessed a security clearance. (SOR ¶1.c) This information supports application of Guideline H disqualifying condition (DC) 1<sup>(7)</sup> and DC 2.<sup>(8)</sup> I have also considered DC 5<sup>(9)</sup> as applicable here. Notwithstanding the fact Applicant has not been in a drug treatment program, illegal drug use by a person who also has access to classified information is an extremely serious matter and should not go unaddressed. Yet the second sentence of DC 5 appears to be the only place in the Directive that contemplates disqualification for such conduct. Applicant has held a clearance since 1987 and his drug use was recent insofar as it continued after he submitted his SF 86 and is the subject of the current assessment of Applicant's suitability for continued access. Based on the foregoing, DC 5 also should be applied to disqualify Applicant.

By contrast, none of the listed mitigating conditions apply here. As noted, Applicant's drug use is recent. Also, Applicant's drug involvement was hardly an isolated or aberrational event, because it occurred as often as weekly over a period of 16 years. Concerning his intent to avoid using marijuana in the future, Applicant has obviously struggled in his attempts to change his lifestyle and allows he may have a more significant drug problem than he may have previously thought. I conclude Guideline H against the Applicant.

Under Guideline E, personal conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the Applicant may not properly safeguard classified information.<sup>(10)</sup> Department Counsel has presented sufficient evidence to establish a case for disqualification under this guideline based on his proven involvement with illegal drugs. Applicant engaged in conduct which, because he was embarrassed by it and did not want his co-workers to know about, may have subjected him to pressure, coercion, or blackmail. Further, his concealment of this conduct demonstrates a pattern of dishonesty that severely undermines the government's confidence he can be relied on to properly safeguard classified information. Based on the foregoing, I conclude that Guideline E DC 4<sup>(11)</sup> and DC 5<sup>(12)</sup> apply here. By contrast, because Applicant still is worried about disclosure to co-workers about his drug use, none of the listed mitigating conditions apply. I conclude Guideline E against Applicant.

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guideline. A fair and commonsense assessment<sup>(13)</sup> of Applicant's drug use over the past 16 years while holding a security clearance, and his willingness to conceal this information from the government and from his co-workers sustains the government's concerns about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Applicant has failed to overcome or mitigate the adverse information presented by the government.

### **FORMAL FINDINGS**

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Illegal Drugs (Guideline H): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Paragraph 2, Personal Conduct (Guideline E): AGAINST THE APPLICANT

Subparagraph 2.a: 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 the Applicant.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Directive, Enclosure 2.
3. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
4. *See Egan*, 484 U.S. at 528, 531.
5. *See Egan*; Directive E2.2.2.
6. Directive, E2.A8.1.1.1.
7. Directive, E2.A8.1.2.1. Any drug abuse...;
8. Directive, E2.A8.1.2.2. Illegal drug possession, including cultivation, processing, manufacture, *purchase*, sale, or distribution; (emphasis added)
9. Directive, E2.A8.1.2.5. Failure to successfully complete a drug treatment program prescribed by a credentialed medical professional. Recent drug involvement, especially following the granting of a security clearance, or an expressed intent not to discontinue use, will almost invariably result in an unfavorable determination.
10. Directive, E2.A5.1.1.
11. Directive, E2.A5.1.2.4. Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail;
12. Directive, E2.A5.1.2.5. A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency;
13. Directive, E2.2.3.