

DATE: February 10, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-08312

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Sabrina Elaine Redd, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's past Drug Involvement is not recent, having occurred more than two years ago. The Applicant was less than candid about his past drug abuse, however, when he executed his December 1991 Security Clearance Application (SCA). Although this falsification is isolated and clearly not recent, the Applicant did not "voluntarily" provide the correct information. Instead, he tested positive for marijuana during a random drug test in September of 2002. The Applicant was then confronted as to his past drug abuse and executed a sworn statement thereafter. Mitigation is not shown as to the Applicant's Personal Conduct. Clearance is denied.

STATEMENT OF THE CASE

On July 21, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on August 4, 2004.

Applicant elected to have this case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on January 5, 2005. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received his copy soon thereafter, and Applicant's Reply was received on or about January 24, 2005. The case was received by the undersigned for resolution on February 2, 2005. The issues raised here are whether the Applicant's past Drug Involvement and questionable Personal Conduct militate against the granting of a security clearance. [The Applicant admits the underlying factual basis of all of the allegations.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the File of Relevant Material and Applicant's Response. The Applicant is 43 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

Guideline H - Drug Involvement

1.a.~1.c. The Applicant describes his marijuana involvement in the following terms:

I first started using marijuana when I was approximately sixteen or seventeen years old [about 1977]. I would smoke one cigarette with friends at gatherings or social events on a biweekly to monthly basis. My usage dropped off in college (1979 to 1983) whereby I used it only a couple of times a year. I did not use marijuana at all for approximately ten years. From approximately 1997 to Aug 02, I estimate I smoked marijuana five times (Item 5 at page 1).

The Applicant was granted a Secret Security Clearance in October of 1999, and used marijuana subsequent to this grant, as described above. In September of 2002, he tested positive for marijuana during a random drug test (Item 6). He intends no future drug abuse (Item 3 at page 5).

1.d.~1.g. The Applicant also used and purchased LSD twice while in college (1979 to 1983), and he used and purchased cocaine once in the mid 1980s (Item 5 at page 2).

Guideline E - Personal Conduct

2.a. In answer to question 20 on a December 1991 SCA, the Applicant failed to divulge any of his past drug abuse, as describe above (Item 4 at page 3). After testing positive for marijuana in September of 2002, the Applicant was confronted and executed a sworn statement in March of 2004, wherein he disclosed his past drug abuse (Item 5).

Mitigation

The Applicant "attended substance abuse counseling . . . subsequent to testing positive" (Item 3 at page 4, *see also* Reply at page 2).

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. The conditions should be followed in every case according to the pertinent criterion, however, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security clearance case presents its own unique facts and circumstances, it should not be assumed that these conditions exhaust the realm of human experience, or apply equally in every case.

As set forth in the Directive, "[each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.

f. Probability that circumstances or conduct will continue or recur in the future."

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must make out its case under Guideline E (Personal Conduct), and Guideline H (Drug Involvement), which establish doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

Personal Conduct is conduct involving questionable judgement, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations. Illegal Drug Involvement also reflects a lack of judgment and discretion. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places. If an applicant has demonstrated a lack of respect for the law in his private affairs, there then exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

CONCLUSIONS

Considering first the Applicant's Drug Involvement, he used marijuana, cocaine and LSD in the 1980s, and marijuana again from 1997~2002. The first disqualifying condition is therefore applicable as there was "drug abuse;" i.e., "use of a legal drug in a manner that deviates from approved medical direction." The second disqualifying condition is also applicable as he purchased cocaine and LSD. However, these are countered by the first mitigating condition as the "drug involvement was not recent," occurring more than two years ago. Mitigation is shown. Guideline H is found for the Applicant.

The same can not be said, however, as to his Personal Conduct and related Criminal Conduct. The Applicant was not truthful when he executed his December 1991 SCA. The second disqualifying condition under Personal Conduct is therefore applicable; i.e., "the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . . or similar form used to . . . determine security clearance eligibility . . ." I can find no countervailing mitigating conditions here as the Applicant only "provide correct information' after being confronted with a positive random drug test. This lack of candor is clearly of security significance; and as such, Guideline E is found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his Personal Conduct. The Applicant has thus not met the mitigating conditions of Guideline E, and of Section E.2.2. of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guideline E.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.

d. For the Applicant.

e. For the Applicant.

f. For the Applicant.

g. For the Applicant.

Paragraph 2: AGAINST THE APPLICANT

a. Against the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light 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 the Applicant.

Richard A. Cefola

Administrative Judge