

DATE: June 29, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-08271

DECISION OF ADMINISTRATIVE JUDGE

DAVID S. BRUCE

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's marijuana use began in 1979 and continued with varying frequency until early 2003. During this time period he intermittently purchased small amounts of marijuana for his personal use, and was also charged with possession of marijuana in state courts on three occasions. Applicant was previously granted a clearance in 1988. He has never participated in any drug awareness, education, or treatment program of any kind. Applicant failed to mitigate the security concern raised by his extended substance abuse by failing to demonstrate a clear and unambiguous intent to remain drug free. Clearance is denied.

STATEMENT OF THE CASE

On September 21, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Review Program*, dated January 2, 1992, as amended and modified (Directive), issued a Statement of Reasons (SOR) to Applicant in response to his application for a security clearance. The SOR itemized six security allegations pursuant to Guideline H, for drug involvement, detailing why DOHA could not preliminarily determine under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's request for a security clearance.

In sworn, written answers dated October 15, 2004, and December 14, 2004, Applicant responded to each of the allegations set forth in the SOR, and further represented that he did not wish to personally present his case at a hearing. Applicant also submitted written statements dated February 12, 2004, and April 20, 2004, to the Industrial Security Representative of the Defense Security Service (DSS) assigned to investigate the case. Department Counsel subsequently submitted the government's File of Relevant Materials (FORM) on January 31, 2005. [\(U\)](#) The complete file was forwarded to Applicant on February 2, 2005. Applicant was given an opportunity to file objections and submit materials in refutation, extenuation, or mitigation. No further response was submitted by Applicant and the case was assigned to me on May 19, 2005.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, I make the following findings of fact:

Applicant has admitted the factual allegations of subparagraphs 1.b., 1.c., 1.d., and 1.e., of the SOR, and he submitted a qualified admission to subparagraph 1.f. ⁽²⁾ Those admissions are incorporated herein by reference. As to subparagraph 1.a., Applicant denied he habitually used marijuana from about 1977 to 2003, but admitted he used it occasionally.

Applicant is 46 years old, divorced, and has a five-year-old daughter. He has been employed since July 2000, as an engine technician with a defense contractor. His present employment was preceded by a five month period of unemployment, and he worked for the same employer in a similar position before becoming unemployed dating back to July 1997. Applicant held a Defense Department/Confidential clearance in January 1988, for an undetermined amount of time.

Applicant began using marijuana in about 1979, when he was about 20 years old. His motivation for using marijuana was attributed to peer pressure at the time as the thing young people of that era did, and also admitting its sometimes relaxing effect. ⁽³⁾ Applicant used the drug off and on on a regular basis until the beginning of 2003, when he quit for the final time, and further admitting he had quit several different times during the time period for a variety of personal reasons. ⁽⁴⁾

During the period of his marijuana use, Applicant purchased small amounts for his personal use, but sometimes would take "breaks from time to time, going for months, or even years at a time without smoking." ⁽⁵⁾

In June 1982, Applicant was charged with possession of marijuana in state court proceedings and went to jail for one night and paid a fine, however, the actual criminal disposition of the case is unknown. ⁽⁶⁾ Applicant also received two "smoking tickets" in state court cases in July 1986, and August 1989 (for drug possession) and received fines for those offenses, ⁽⁷⁾ later explaining to the DSS Investigator that these citations were issued at concerts. ⁽⁸⁾

Applicant admitted social cocaine use with friends (half a dozen times) over a half year period in the mid 80's, but maintains he did not like it, and never purchased it. ⁽⁹⁾

Applicant stopped smoking completely in the beginning of 2003, for job related issues, specifically, mandatory drug testing, and on account of his 13-year-old daughter who he does not want to see start smoking. ⁽¹⁰⁾ Applicant has never participated in any drug education or treatment programs of any kind, and has never consulted with a mental health professional for any reason. ⁽¹¹⁾

Applicant has not been arrested or charged with any other criminal offenses in the seven year period prior to submitting his Security Clearance Application (SF 86). ⁽¹²⁾

POLICIES

The adjudicative process requires thorough consideration and review of all available, reliable Enclosure 2 of the Directive, *Adjudicative Guidelines For Determining Eligibility For Access To Classified Information*, sets forth the criteria which must be evaluated when determining security clearance eligibility. The adjudicative guidelines specifically distinguish between those factors that are considered in denying or revoking an employee's request for access to classified information (Disqualifying Conditions), and those factors that are considered in granting an employee's request for access to classified information (Mitigating Conditions). By acknowledging that individual circumstances of each case are always different, the guidelines provide substantive standards to assist an administrative judge in reaching fair and impartial common sense decisions.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at meritorious decisions. Section

E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the conduct of the applicant and the circumstances in any case, the factors an administrative judge should consider pursuant to the concept are: (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 individual's age and maturity at the time of the conduct; (5) the voluntariness of the 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 or recurrence.

Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interests of national security.

Granting an applicant's clearance for access to classified information is predicated on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not just the *actual* risk of disclosure of such information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information in any aspect of his or her life. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. ⁽¹³⁾ The decision to deny a security clearance request to an individual is not necessarily a determination of the loyalty of the applicant. ⁽¹⁴⁾ It is merely an indication the applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

In accordance with the Directive, the government bears the initial burden of proof in the adjudicative process to establish conditions which indicate it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. ⁽¹⁵⁾ When the government meets this burden, the corresponding heavy burden of rebuttal then falls on the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the position of the government, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance. ⁽¹⁶⁾

Based upon consideration of all the evidence submitted in this matter, the following adjudicative guideline is appropriate for evaluation with regard to the facts of this case:

Guideline H - Drug Involvement: 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.

The Guideline H disqualifying and mitigating conditions, either raising security concerns or mitigating security concerns applicable to this case are set forth and discussed in the Conclusions section below. The decision reached in this case is drawn from conclusions I have found to be reasonable, logical and based upon the evidence contained in the case record.

CONCLUSIONS

I have thoroughly considered all the facts in evidence in this case and the legal standards required by the Directive. The government has established a *prima facie* case for disqualification under Guideline H - Drug Involvement.

Considering all the evidence, Drug Involvement Disqualifying Conditions (DI DC) E2.A8.1.2.1. (*Any drug abuse*), DI DC E2.A8.1.2.2. (*Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*), and DI DC 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*), apply in this case. Drug abuse is defined in provision E2.A8.1.1.3. (*The illegal use of a drug or use of a legal drug in a manner that deviates from approved medical directive*).

Applicant's involvement with marijuana spanned a period of about 24 years. He denies the allegation that he "habitually" used marijuana over this period of time, his response statement reflecting "occasional" use. Nevertheless,

Applicant experienced three contacts with the law regarding possession of marijuana during this period of "occasional use." I find Applicant's general drug use over most of his adult life as intermittent, and likely not daily or even weekly. Applicant's use of cocaine was not recent, and appears to have been a more isolated or aberrational event during the 1980's. His conduct and consistent contact with marijuana over this lengthy period of time, however, exhibits a pattern of questionable judgment, irresponsibility, and immaturity, beyond its illegal nature. Based upon his statement that he has quit several times in the past, it is also possible the marijuana substance abuse has not stopped completely, or is at least subject to being promptly resurrected. Applicant continued using marijuana for many years after he held a security clearance in 1988. Applicant's behavior and judgment regarding his use of illegal substances is clearly unpredictable based on his past and lengthy drug history.

I have considered all the mitigating conditions and especially considered Drug Involvement Mitigating Condition (DI MC) E2.A8.1.3.1 (*The drug involvement was not recent*), and conclude it applies to the cocaine aspect of this case as set forth above. I have also considered DI MC E2.A8 1.3.2 (*The drug involvement was an isolated or aberrational event*), and DI MC E2.A8.1.3.3 (*A demonstrated intent not to abuse any drugs in the future*), and conclude they do not apply to the marijuana aspect of the case. Applicant suggests his decision to discontinue his marijuana use is based on being subject to mandatory drug testing at work, or on account of his daughter. I find there is no demonstrated *genuine* intent to not abuse drugs in the future, or proof of satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, with a favorable prognosis for continued abstinence in the future. Applicant's use of marijuana after having held a clearance highlights his questionable judgment causing very serious concerns. Despite enduring lengthy periods of substance abuse likely separated by similar periods of abstinence, Applicant has failed to acquire a better understanding of the effects of continued drug use. Applicant's improper and illegal involvement with drugs and denial of the extent of his abuse raises concerns regarding his willingness and ability to discontinue illegal marijuana use and to protect classified information.

I have considered all the record evidence in this case as well as the "whole person" concept required by the Directive in evaluating Applicant's vulnerability in protecting our national interest. I am persuaded by the totality of the evidence in this case that it is not clearly consistent with the national interest to grant Applicant a security clearance. For the reasons stated, Applicant has failed to mitigate the security concerns caused by the drug involvement issues. Accordingly, Guideline H is decided against Applicant.

FORMAL FINDINGS

In accordance with Section E3.1.25 of Enclosure 3 of the Directive, the following are the formal findings as to each allegation in the SOR:

Paragraph 1. Drug Involvement (Guideline H) AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. For 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.

David S. Bruce

Administrative Judge

1. The pleading referring the file to the Administrative Judge pursuant to the Directive, Additional Procedural Guidance, Paragraph 7, was actually dated January 31, 2004, evidently in error.
2. Subparagraph 1.f. alleges that Applicant used cocaine in the late 1980's. Applicant's response indicates he "tryed" (sic) cocaine in the mid 1980's.
3. Item 6 (Applicant's written Statement to DSS Investigator dated April 20, 2004), at 1.
4. Item 5 (Applicant's written Statement to DSS Investigator dated February 12, 2004), at 1.
5. Item 6, *supra* note 3, at 1.
6. Item 4 (Applicant's Security Clearance Application (SF 86) dated May 29, 2003), at 5.
7. *Id.*, at 6
8. Item 5, *supra* note 4, at 1.
9. Item 6, *supra* note 3, at 1.
10. Applicant referenced his daughter, presently age five, in his Security Clearance Application (SF 86), answer to question 9. His relationship and reference to this 13-year-old daughter made to the DSS Investigator on February 12, 2004, is unclear. It is likely what appears on the copied written statement in the case file as a "13" (referring to the daughter's age) was actually intended to be a 3, given his daughter's actual age at the time the statement was given.
11. Item 4, *supra* note 6, at 5.
12. *Id.*, at 6.
13. Directive, Enclosure 2, Para. E2.2.2.
14. Executive Order 10865, Section 7.
15. ISCR Case No. 96-0277 (July 11, 1997) at page 2.
16. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Para. E3.1.15.