

DATE: November 3, 2005

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-01123

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esquire, Department Counsel

FOR APPLICANT

Cathe L. Caraway-Howard, Esquire, Applicant's Counsel

SYNOPSIS

The Applicant used marijuana and cocaine, one time each, in 1983. He was granted a security clearance in November of 1984; but subsequent to this grant and until December of 1984, the Applicant used methamphetamine for a three week period, culminating with daily usage. During this period of methamphetamine usage, the Applicant spent as much as \$500 per week for the drug. He was counseled by his employer, on two occasions, due to his use of methamphetamine. Fourteen years later, in 1998, the Applicant again used marijuana. He used marijuana on five occasions, about once a year, until his last usage in January of 2003. He intends no future Drug Involvement, and "rarely" associates with those he knows use drugs. As the Applicant's past Drug Involvement is not recent, nearly three years ago, mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On June 13, 2005, 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 the 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 July 15, 2005.

The case was received by the undersigned on August 17, 2005. A notice of hearing was issued on August 29, 2005, and the case was heard on September 16, 2005. The Government submitted documentary evidence. Testimony was taken from the Applicant, who called one witness to testify in his behalf.. The transcript (TR) was received on September 27, 2005. The issue raised here is whether the Applicant's admitted Drug Involvement militates against the granting of a security clearance. [The Applicant admits the underlying factual basis of all of the allegations, with minor exceptions.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 44, 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.j. The Applicant used marijuana and cocaine, one time each, in 1983 (TR at page 29 line 5 to page 31 line 10, and at page 33 lines 6~11, *see also* Applicant's Exhibit (AppX) Y). He was granted a security clearance in November of 1984 (TR at page 31 line 3 to page 32 line 1, *see also* AppX Y). Subsequent to this grant and until December of 1984, the Applicant used methamphetamine for a three week period, culminating with daily usage (TR at page 32 line 11 to page 33 line 5, *see also* AppX Y). During this period of methamphetamine usage, the Applicant spent as much as \$500 per week for the drug (*Id*). He was counseled by his employer on two occasions, once in November of 1984 and again in December of 1984, due to his use of methamphetamine (*Ibid*). Fourteen years later, in 1998, the Applicant again used marijuana (TR at page 29 line 5 to page 31 line 10, and at page 33 lines 6~11, *see also* AppX Y). He used marijuana on five occasions, about once a year, until his last usage in January of 2003 (*Id*). He intends no future Drug Involvement, and "rarely" associates with those he knows use drugs (TR at page 49 line 9 to page 50 line 8).

Mitigation

The Applicant is highly thought of by "his immediate Supervisor" (TR at page 17 line 3 to page 27 line 20). He is also highly respected in his work place (AppXs D~W).

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. Furthermore, 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 that is speculative or conjectural in nature.

The Government must make out its case under Guideline H (Drug Involvement), which establishes 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.

The improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. 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

The Applicant was involved with drugs in 1983~1984, and again from 1998 until his last usage of marijuana in January of 2003. The first and second Disqualifying Conditions are therefore applicable: firstly, there was "drug abuse," and secondly, there was "[i]llegal drug possession, including . . . purchase." However, the first and third Mitigating Conditions are also applicable. Under the circumstances of this case, his past Drug Involvement is "not recent," having occurred nearly three years ago. Furthermore, the Applicant has shown a "demonstrated intent," through his testimony and his supporting documentation, "not to abuse drugs in the future." The Applicant's Drug Involvement is therefore not of present security significance; and as such, Guideline H is found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his past Drug Involvement. The Applicant has thus met the mitigating conditions of Guideline H, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline H.

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.
- h. For the Applicant.
- i. For the Applicant.
- j. For 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 clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge