

DATE: October 31, 2005

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-01160

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is employed by a defense contractor as a mechanical engineer. He has a history of heavy marijuana use as a high school and college student. He used cocaine once in 2002. While he does not intend to use marijuana or cocaine in the future, he associates with individuals who use illegal drugs. Applicant's failure to mitigate his use of illegal drugs raises security concerns. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On June 17, 2005, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision-security concerns raised under Guideline H (Drug Involvement) of the Directive. Applicant provided a written response to the SOR on July 1, 2005. He requested his case be determined on the record in lieu of a hearing.⁽³⁾ The Government compiled its File of Relevant Material (FORM) on July 26, 2005. The FORM contained documents identified as Items 1 through 6. On July 29, 2005, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the FORM on August 8, 2005. He did not submit any information within 30 days after receiving a copy of the FORM. On October 11, 2005, the case was assigned to me for a decision.

FINDINGS OF FACT

The SOR contains four allegations of disqualifying conduct under Guideline H, Drug Involvement. In his answer to the SOR, Applicant admitted all four allegations. His admissions are incorporated as findings of fact.

Applicant, who is 24 years old and single, is employed as a mechanical engineer by a defense contractor. He graduated from college in August 2003. (Item 1.)

Applicant began using marijuana in high school. He attended high school from September 1996 to June 1999. (Item 4.)

During his high school years, he smoked marijuana regularly with friends approximately 50 times. From January 1999 to at least August 2003, while he was a college student, Applicant purchased marijuana for his own use and the use of his companions. He used marijuana during his college years approximately 950 times. He also ingested brownies laced with marijuana approximately once. On a ski trip with friends in February 2002, he used cocaine once. He used marijuana in September 2003, after finishing college. (Item 1.) He has witnessed others using cocaine several times. (Item 6.) Applicant stays in contact with companions with whom he used illegal drugs. (Item 6)

Applicant completed a security clearance application (SF-86) on October 30, 2003. In response to Question 27 on the SF-86, he admitted his use of illegal drugs and the frequency of his illegal use. (Items 4 and 5.)

On August 18, 2004, Applicant was interviewed by a special investigator for the U.S. Office of Personal Management. (Item 6.) He identified his drug use with his life as a college student. He denied being dependent on marijuana and said it had no effect on his studies, work, or personal relationships. He denied seeking treatment, counseling or rehabilitation for his drug use. (Item 6.)

Applicant stated an intention not to use marijuana or cocaine in the future. He has continued to associate with individuals who use illegal drugs. (Item 6.)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline H, Drug Involvement

In the SOR, DOHA alleged under Guideline H that Applicant used marijuana, with varying frequency and at times daily, from approximately January 1999 to at least September 2003 (¶ 1.a.); that he purchased marijuana from about September 1999 to at least August 2003 (¶ 1.b.); that he used cocaine in approximately February 2002 (¶ 1.c.); and that he continued to associate with individuals who use marijuana and/or cocaine (¶ 1.d.).

The Government's concern with Guideline H conduct is that it raises questions regarding an individual's ability or willingness to protect classified information. Drug abuse or dependence may impair social or occupational functioning, thereby increasing the risk of an unauthorized disclosure of classified information. ¶ E2.A8.1.1.1.

Drugs are defined under Guideline H as mood and behavior-altering substances, including drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended, and inhalants and other similar substances. ¶¶ E2.A8.1.1.2., E2.A8.1.1.2.1., E2.A8.1.1.2.2. Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction. ¶ E2.A8.1.1.3. Marijuana, or cannabis, and cocaine are identified and listed in the Controlled Substances Act of 1970, as amended, as controlled substances.

Through Applicant's own admissions, the Government established a *prima facie* case that he purchased and used marijuana frequently, including daily, for over 4 ½ years between January 1999 and September 2003; that he used cocaine once in February 2002; and that he continues to associate with individuals who use marijuana and/or cocaine. Applicant has admitted Guideline H drug involvement specified in the SOR and identified as disqualifying under ¶¶ E2.A8.1.2.1. and E2.A8.1.2.2.

The record shows that Applicant's involvement with marijuana began in high school and continued throughout his college years. By his own estimate, Applicant used marijuana approximately 50 times in high school and approximately 950 times in college. He ingested marijuana in brownies once and used cocaine once.

Applicant stated his last drug use occurred in September 2003, approximately two years ago. Thus, his drug involvement was not recent, and, accordingly, mitigating condition E2.A8.1.3.1. applies. However, Applicant's marijuana use was intensive and spanned a period of approximately five to six years of his adolescence and young adulthood. Thus, his drug involvement was neither isolated nor aberrational and represented a consistent and long-standing lifestyle choice. Therefore, mitigating condition E2.A8.1.3.2. does not apply.

Applicant asserted in his signed, sworn statement of August 18, 2004, that he did not intend to use marijuana or cocaine in the future. (Item 6.) He also stated he did not think his use of marijuana affected his personality or responsibilities as a student, friend, family member, or worker, suggesting he was unaware of or ignored the fact that illegal involvement with drugs raises legitimate questions about an individual's willingness or ability to obey the law and to protect classified information. Additionally, Applicant provided no plan or rationale for relinquishing his habit of drug use, and he stated he continued to associate with people who use marijuana and cocaine. Absent some clear demonstration of how he planned to abstain for marijuana and cocaine use, his assurances that he will not use drugs in the future lack credibility, and thus mitigating condition E2.A8.1.3.3 is inapplicable. Accordingly, the allegations in the SOR of disqualifying conduct under Guideline H are concluded against the Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline H.: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

DECISION

In light of all 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 Applicant. Clearance is denied.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. The file contained many ambiguous statements regarding Applicant's wishes for the disposition of his case. By letter

dated January 17, 2005, Applicant stated he did not wish to have a hearing.