

DATE: June 30, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 05-04753

**DECISION OF ADMINISTRATIVE JUDGE**

**PAUL J. MASON**

**APPEARANCES**

**FOR GOVERNMENT**

J. Theodore Hammer, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's drug involvement from 2000 to September 2003 has not been mitigated. His drug use is aggravated by the fact he purchased both marijuana and cocaine. He also was arrested and convicted of two drug-related offenses in 2000. Clearance is denied.

**STATEMENT OF CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On December 20, 2005, under Executive Order 10865 and Department of Defense Directive 5200.6, DOHA issued a Statement of Reasons (SOR) detailing the reasons for its security concerns raised under the drug involvement guideline (Guideline H) of the Directive. In his answer dated January 14, 2006, Applicant requested a decision be made on the record in lieu of a hearing. A copy of the Government's File of Relevant Material (FORM, the Government's evidence in support of the SOR) was sent to Applicant on April 6, 2006. Applicant received the FORM on April 12, 2006. Applicant's response to the FORM was due by May 12, 2006. No response was submitted. The case was assigned to me for decision on June 14, 2006.

**FINDINGS OF FACT**

Applicant admitted all seven drug involvement allegations of the SOR. Applicant is 24 years old and employed as a network administrator by a defense contractor. He seeks a secret security clearance. The security clearance application (SCA, Item 2), dated January 28, 2004, reflects Applicant was in a vocational school and was scheduled to receive an associate's computer degree in February 2004. The SCA also reveals he is married but separated.

The first two allegations of the SOR address Applicant's purchase of cocaine and use of the drug at least 10 times between July and September 2003. The next two allegations refer to Applicant's marijuana use approximately three times a week between May 2000 and January 2003. Applicant was found guilty of possession of controlled substances in October 2000. He was found guilty of possession of paraphernalia in November 2000. The final drug allegation

identifies Applicant's use of ecstasy on at least one occasion in 1999.

The record contains no evidence of the status of Applicant's drug use at the present time. The record contains no character evidence from Applicant's workplace or neighborhood about essential elements of his character. In the general remarks module of his SCA, Applicant stated:

I know there are some questionable things which have happened in my past; but I have changed my thought process and re-evaluated my life for the better. I am a law-abiding citizen and an active participant in the success of my future. I have done a lot of maturing in the past few years and I know where I want to go with my life.

### POLICIES

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

### **Burden of Proof**

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *See Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

### **Drug Involvement (Guideline H)**

Improper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse may impair social or occupational functioning.

### CONCLUSIONS

Drug involvement (DI) is defined as mood and behavior-altering substances, including drugs, materials, and other chemical compounds listed in the Controlled Substances act of 1970. Drugs also include marijuana, depressants, narcotics, stimulants, hallucinogens, inhalants and other substances.

Through Applicant's admissions, the Government has established its case of drug involvement based on his use and purchase of drugs since 1999. DI disqualifying condition (DC) E2.A8.1.2.1. (*any drug abuse*) and DI DC E2.A8.1.2.2. (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*) applies. Applicant used ecstasy on at least one occasion in 1999. He used marijuana up to three times a week from May 2000 to January 2003, followed by cocaine use on 10 occasions in the summer of 2003. He has purchased marijuana and cocaine.

DI mitigating condition (MC) E2.A8.1.3.1. (*the drug involvement was not recent*) does not apply to Applicant's marijuana and cocaine use because less than three years has passed since he used these two drugs. Conversely, Applicant's ecstasy use is mitigated as it occurred on one occasion about seven years ago. Applicant's illegal drug involvement with marijuana and cocaine over a three-year period was neither isolated nor sporadic as defined by DI MC E2.A8.1.3.2. (*the drug involvement was an isolated or aberrational event*). Hence, allegations 1.a. through 1.f. are concluded against Applicant, whereas his ecstasy use, which occurred only once about seven years ago, is mitigated.

Though Applicant's remarks at the end of his SCA in 2004 could mean he was trying to describe the reasons why he desired to be drug free in the future, he had ample opportunity between the execution of the SCA in January 2004 and May 12, 2006 to clarify the ambiguity of his January 2004 comments. Despite being advised in the explanatory information attached to the SOR and FORM to provide information with specificity and/or to register objections where necessary, Applicant chose not respond and provide updated information. Applicant has not convincingly demonstrated his intention to forego future drug use. *See, DI MC E2.A8.1.3.3. (a demonstrated intent not to abuse any drugs in the future).*

Having found against Applicant under the drug involvement guideline, the record should still be evaluated as a whole to determine whether the whole person concept warrants a different result. Though Applicant's use of ecstasy in 2000 is extenuated because it was isolated, and the fact Applicant was only 19 years old at the time, Applicant switched to regular marijuana use in 2000 and was arrested for marijuana possession on two occasions inside of one month. Instead of giving up his drug use altogether after these arrests, he continued to use marijuana and cocaine regularly until September 2003. Without evidence of behavioral changes supporting a drug-free lifestyle, there is still a distinct risk the past drug activity could recur. The risk of recurrence must be resolved against Applicant.

### **FORMAL FINDINGS**

Paragraph 1 (Drug Involvement, Guideline H): AGAINST THE APPLICANT

Subparagraph a. Against the Applicant.

Subparagraph b. Against the Applicant.

Subparagraph c. Against the Applicant.

Subparagraph d. Against the Applicant.

Subparagraph e. Against the Applicant.

Subparagraph f. Against the Applicant.

Subparagraph g. 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.

Paul J. Mason

Administrative Judge