

DATE: July 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-10510

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

John Bayard Glendon, Esq. , Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate security concerns based on drug involvement between 1998 and 2005, and failure to accurately state the extent and period of the drug use on his SF 86. Since the last drug use was only one year ago and after submission of his SF 86, no mitigating conditions are applicable. Clearance is denied.

STATEMENT OF CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) dated December 9, 2004, to 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 Applicant. It was received by Applicant on January 18, 2006. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement dated February 15, 2006, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on May 24, 2006. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did submit additional material on June 11, 2006. The case was assigned to me on June 20, 2006.

FINDINGS OF FACT

Applicant admitted all the allegations in the SOR but offered some explanatory information in his answer and his response to the FORM. After a complete and thorough review of the information in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 26-year-old employee of a defense contractor working as a scientist. He received his college degree and 2001 and has been employed by the contractor since 2002. He used marijuana during his college years and for four years thereafter. The total period of use was from the fall of 1998 until the spring of 2005 as admitted in his interrogatory (Exh. 6). He also used cocaine and ecstasy during the period October 2001 and February 2002. He used prescription drugs without a prescription for a one year period between August 2000 and January 2002.

Even after Applicant submitted his SF 86 application for a security clearance in July, 2004, he continued to use marijuana for a over a year by his own admission. While he reported the drug use at Question 27 on his Security Clearance Application (SF 86), he minimized the period of usage indicating that he had not used drugs since 2003. He also stated on the SF 86 that he only used drugs for a short time in college and had not been involved with drugs for several years. He added a statement at Question 43 that it was not "something I could ever see myself doing in the future". Yet he continued to do so.

In his response to the FORM, Applicant stated that he had not used drugs for at least a year, had recently married and purchased a home and would not "risk my family, home or career on something as juvenile and stupid as drug use".

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 participation; (6) the presence or absence of rehabilitation and other 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR:

The government alleges disqualifying condition (DC) 1 under Guideline H concerning drug involvement. Drug involvement is always a security concern because it raises questions about a person's willingness or ability to protect classified information. Any drug abuse is a condition that may be disqualifying. The following definition is provided: "Drug abuse includes "the use of a legal drug in a manner that deviates from approved medical direction." (E2.A8.1.1.3) Applicant admitted use of drugs over approximately seven years from 1998 until 2005. His various statements concerning the period of use and when he ceased use raises questions about his credibility. His statements on the SF 86 regarding his intention to cease using drugs was equivocal, and he continued to use drugs even after filing the SF 86 in 2004 when he should have known that drug use was a critical factor in obtaining a security clearance.

Since Applicant abused marijuana within the last two years, continued his use over a long period of time, and offered no credible evidence to show that it would not recur, no mitigating conditions are applicable.

Security concerns on personal conduct under Guideline E were raised by Applicant's use of drugs even after filing his SF 86 where he stated his intention not to use drugs. His conduct shows questionable judgment, unreliability, and unwillingness to comply with rules and regulations and could indicate that he may not properly safeguard classified information. (E2.A5.1.1.) The false and inconsistent statements made by Applicant indicates a cavalier approach to giving straightforward answers. No evidence was offered to mitigate those security concerns. No mitigating conditions are applicable.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Applicant has held a position of trust with his company for four years but offered no evidence to counter the proof and admission of the conduct that disqualify him from holding a security clearance. By electing to submit his case on the record without a hearing, he lost the opportunity to present additional evidence in person concerning whole person factors that could have been evaluated.

Thus, I conclude that it is not clearly consistent with the national interest to grant a security clearance to Applicant.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

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

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

DECISION

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge

