

DATE: August 31, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 05-14713

**DECISION OF ADMINISTRATIVE JUDGE**

**MARC E. CURRY**

**APPEARANCES**

**FOR GOVERNMENT**

Fahryn E. Hoffman, Esq., Department Counsel

Stephanie Hess, Esq., Department Counsel

**FOR APPLICANT**

*Pro se*

**SYNOPSIS**

Applicant smoked marijuana with varying degrees of frequency for approximately 20 years. Although his last use was approximately two years ago, it occurred while the security clearance process was pending. Also, he provided an equivocal answer when asked by an investigator from the U.S. Office of Personnel Management in 2005, whether he would use it in the future. His history of drug involvement remains a security concern. Clearance is denied.

**STATEMENT OF THE CASE**

On January 18, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating it was unable to find that it was clearly consistent with the national interest to grant or continue a security clearance. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive). The SOR alleges a security concern under Guideline H for drug involvement. Applicant answered the SOR on January 25, 2006, and requested a hearing.

The case was originally assigned to another judge on April 10, 2006, and then transferred to me on June 20, 2006. I issued a notice of hearing on July 6, 2006, scheduling it for July 26, 2006. The hearing was held as scheduled. During the hearing, I received one government exhibit, one Applicant exhibit, and the testimony of Applicant. DOHA received the transcript on August 7, 2006.

**FINDINGS OF FACT**

Applicant admitted all of the SOR allegations except subparagraph 1.d. I have incorporated his admissions into the findings of fact. In addition, I make the following findings of fact:

Applicant is a 36-year-old single man with no children. He finished high school in 1987 and attended college for

approximately two years without earning a degree. He works as a project manager for an electrical contractor, and is a "conscientious, dedicated, and trustworthy employee."<sup>(1)</sup>

Applicant smoked marijuana for 20 years. He used it most frequently as a teenager in the mid-1980's. This period of heavy use corresponded with a marijuana-related arrest in 1987 for possession of drug paraphernalia. He consequently received probation before judgment.

Applicant's marijuana use declined as he grew older. He used it 10 to 12 times in the 1990's and approximately three to four times since 2000. Although it never affected his job performance, he once was denied a commercial driver's application in 1992 because he failed a drug test.<sup>(2)</sup>

When completing his security clearance application (SF 86) in January 2004, Applicant was fully forthcoming about his past marijuana use. However, he used it again approximately six months later, in the summer of 2004.<sup>(3)</sup> During an interview in approximately June 2005, when an investigator from the U.S. Office of Personnel Management (OPM) asked him whether he planned to use marijuana again in the future, Applicant stated "I can't promise you anything."<sup>(4)</sup> He has never been treated for drug abuse, and has not used it since the summer of 2004.

### POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching impartial, common sense decisions. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future.

The following adjudicative guideline is raised:

**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 unauthorized disclosure of classified information.

Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, are set forth and discussed in the conclusions below.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is "clearly consistent with the national interest."<sup>(5)</sup> In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The government is responsible for presenting witnesses and other evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Applicant's loyalty is not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

### **CONCLUSIONS**

Applicant used marijuana for nearly 20 years, at times purchasing it. Drug Involvement Disqualifying Condition (DI 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*), apply. He has not used it in approximately two years. Drug Involvement Mitigating Condition (DI MC) E2.A8.1.3.1 (*The drug involvement was not recent*), applies.

Applicant has not used marijuana frequently in the past 15 years. Over the past two years, he has abstained completely. Balancing the applicable disqualifying and mitigating conditions in conjunction with the whole-person concept, these factors reflect positively upon his security clearance-worthiness. They are greatly outweighed, however, by the negative security inferences generated by his relatively advanced age at the time of the most recent use,<sup>(6)</sup> the heightened likelihood of recurrence<sup>(7)</sup> generated by his use in 2004 following the completion of an SF 86, and his equivocal answer regarding future marijuana use in response to a question from an OPM investigator in 2005. I conclude Applicant's use of marijuana remains a security concern.

### **FORMAL FINDINGS**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

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 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.

Marc E. Curry

Administrative Judge

1. Exhibit A, Reference Letter of Facility Security Officer, dated July 20, 2006.
2. Tr. at 52.
3. Tr. at 43.
4. Tr. at 46.
5. *See* Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.
6. Directive, Sec. E2.2.1.4.
7. Directive, Sec E2.2.1.9.