

DATE: February 21, 2007

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 06-05005

DECISION OF ADMINISTRATIVE JUDGE

MARY E. HENRY

APPEARANCES

FOR GOVERNMENT

Francisco Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Between 1998 and March 2005, Applicant sporadically smoked marijuana cigarettes provided to him by family members or friends. When he and his wife renewed their marriage vows in March 2005, he promised not to smoke marijuana in the future, a promise he has kept. He does not intend to smoke marijuana or use any other drugs in the future. He has mitigated the government's concerns under Guideline H. Clearance is granted.

STATEMENT OF THE CASE

On April 20, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended. The SOR 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. Specifically, the SOR set forth security concerns arising under Guideline H (Drug Involvement), of the Directive. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. On May 15, 2006, Applicant submitted a notarized response to the allegations. He requested a hearing.

DOHA assigned this case to another administrative judge on July 11, 2006, but reassigned it to me on December 18, 2006 because of caseload considerations. DOHA issued a notice of hearing on January 9, 2007, and I conducted a hearing on January 25, 2007. The government submitted two exhibits, which were marked as Government Exhibits 1 and 2 and admitted into evidence. Applicant has not submitted any additional evidence. Applicant testified. The hearing transcript was received on February 5, 2007.

FINDINGS OF FACT

Applicant admitted the allegation under Guideline H, subparagraph 1a. ⁽¹⁾ His admission is incorporated as findings of

fact. After a complete review of the evidence in the record and upon due consideration, I make the following findings of fact.

Applicant is a 49-year-old senior electrical engineer for a defense contractor. He has worked for this contractor for eighteen months. He completed a security clearance application (SF 86) in July 2005. [\(2\)](#)

Applicant and his wife married in 1985. Their daughter is 20 years old and a college student.

Applicant graduated from college in 1984 with bachelor of science degree in engineering. Upon graduation, he obtained employment in private industry with Company A, a job he held for 13 years. While working at Company A, he attended graduate school, obtaining a masters degree in professional studies in January 1993. [\(3\)](#)

In November 1997, Company A eliminated his position as part of downsizing. He immediately obtained employment with Company B, which ended eight months later when the company closed. After months of unemployment, he started a restaurant business, which he operated for one or two years. In April 2000, he accepted a temporary position as a project manager on a contract with Company C. When the contract ended in December 2000, he immediately obtained permanent employment with Company D, as a project engineer. He worked for this employer until June 2003, when his position was eliminated and he was laid off. After six months of unemployment, he began work in December 2003 as an operations manager for Company E, a position he held until he accepted employment with his current employer in July 2005. [\(4\)](#)

After losing his career position in late 1997 and his second job in 1998, Applicant, at age 40, started smoking marijuana occasionally with his brothers and friends, information he voluntarily provided in his SF-86. From July 1998 until April 2000, he sporadically smoked marijuana, usually on vacation and when between jobs. From April 2000 until June 2003, he stopped smoking marijuana. During this time, he twice passed pre-employment drug testing. Company D conducted random drug testing, which he passed. When he lost his job with Company D in June 2003, he resumed his sporadic use of marijuana until March 2005. [\(5\)](#)

Applicant's wife knew about his drug usage. When he was employed at Companies C and D, he did not smoke marijuana, as it was against company policy. Company E had no drug policy. When he smoked marijuana, he did it out of his daughter's presence. He never purchased, sold, cultivated, processed, manufactured, or distributed marijuana. His family and friends provided the marijuana cigarette, when he smoked it. His use of marijuana never impacted his finances, personality, or reliability. He has never been arrested, charged or cited for drug use. [\(6\)](#)

He last smoked marijuana in March 2005. At this time, he and his wife renewed their marriage vows, when she became a member of his church. As one of his promises to her, he agreed there would be no more drug usage. He intends not to smoke marijuana in the future and has told his family and friends about this decision. He views his current position as a new career opportunity, which he does not intend to jeopardize with drug use. He also decided that use of drugs is detrimental to his health. [\(7\)](#)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. 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 Paragraph E2.2., Enclosure 2 of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Included in the guidelines are disqualifying conditions and mitigating conditions applicable to each specific guideline. 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. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in the Directive. Specifically, these are: (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. ⁽⁸⁾

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. ⁽⁹⁾ The government has the burden of proving controverted facts. ⁽¹⁰⁾ The burden of proof is something less than a preponderance of the evidence. ⁽¹¹⁾ Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. ⁽¹²⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. ⁽¹³⁾

No one has a right to a security clearance, ⁽¹⁴⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." ⁽¹⁵⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. ⁽¹⁶⁾ 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." The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant. ⁽¹⁷⁾ 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.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

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 or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

CONCLUSIONS

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

The government has established its case under Guideline H. Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1. (*Any drug abuse...*), ⁽¹⁸⁾ and DI DC E2.A8.1.2.2. (*Illegal drug possession, including cultivation, processing, manufacture, purchase sale, or distribution*), apply. At the age of 40, Applicant decided to smoke marijuana, an illegal drug under the Controlled Substances Act of 1970. To use this drug, he had to possess it. He occasionally smoked marijuana for recreational purposes for almost seven years.

I considered all the Drug Involvement Mitigating Conditions (DI MC). I conclude that DI MC E2.A8.1.3.1. (*The drug involvement was not recent*) ⁽¹⁹⁾ and DI MC E2.A8.1.3.3. (*A demonstrated intent not to abuse any drugs in the future*) apply. ⁽²⁰⁾ Applicant stopped smoking marijuana 22 months ago, after promising his wife that it would no longer be a part of his life. His wife had decided to join his church, something that had long been important to him. Her decision prompted his decision to change his attitude towards smoking marijuana. His decision occurred several months before he started his current position and applied for a security clearance. He continues to strongly assert that he does not intend to use marijuana or any other drug. He no longer sees this conduct as appropriate, and does not desire to harm his new career.

Protection of our national security is of paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the adjudicative process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Thus, in reaching this decision, I have considered the whole person concept in evaluating Appellant's risk and vulnerability in

protecting our national interests.

Subsequent to losing a job he thought he would have indefinitely and a second job a few months later, Applicant started smoking marijuana, a decision he now realizes was wrong. While he actively decided to engage in conduct he knew was wrong, he initially did so during a period of his life when his job prospects seemed bleak. He viewed his career, as he had known it, as over, leading him to make poor decisions about drug use. He struggled for several years to find secure employment. He thought his employment at Company D was permanent; thus, he was shocked when his job was eliminated. He again smoked marijuana occasionally. He finally evaluated his conduct and decided it should cease. His credibility is excellent. His voluntary disclosure of his past drug use during the processing of his security clearance is the sole basis for the government's knowledge of his marijuana use. He has kept his promise to his wife. Given the importance of this promise to him, there is little likelihood that he will smoke marijuana in the future. His family life is stable and his finances are good. His goal is to live a healthy life, and he does not see drugs as a healthy way of living. Given his attitude, there is little potential for coercion, pressure, exploitation or duress. In voluntarily revealing his drug use, he demonstrated honesty. He has mitigated the government's concerns about his past marijuana use. Accordingly, for the reasons stated, I find that it is clearly consistent with the national interest to grant a security clearance to Applicant.

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:

SOR ¶ 1-Guideline H : FOR APPLICANT

Subparagraph a: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is granted.

Mary E. Henry

Administrative Judge

1. Applicant's response to the SOR, dated May 15, 2006, at 1.
2. Government Exhibit 1 (Applicant's security clearance application, dated July 22, 2005) at 1, 2, 6-7.
3. *Id.* at 9-10, 17, 20; Tr. at 16, 18, 21.
4. Government Exhibit 1, *supra* 2, at 10-16; Tr. at 16-17, 19.
5. *Id.* at 17, 20; Tr. at 12, 22, 24, 26.
6. Government Exhibit 2 (Applicant's signed statement, dated November 8, 2005) at 2; Tr. at 20, 22-23.
7. Government Exhibit 2, *supra* note 6, at 3; Tr. at 13, 14, 20, 27, 33-34.
8. Directive, Enclosure 2, ¶ E2.2.1.1. through E2.2.1.9.
9. ISCR Case No. 96-0277 at 2 (App. Bd., Jul. 11, 1997).
10. ISCR Case No. 97-0016 at 3 (App. Bd., Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
11. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

12. ISCR Case No. 94-1075 at 3-4 (App. Bd., Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
13. ISCR Case No. 93-1390 at 7-8 (App. Bd. Decision and Reversal Order, Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
14. *Egan*, 484 U.S. at 531.
15. *Id.*
16. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
17. Executive Order No. 10865 § 7.
18. Drug abuse is defined in E2.A8.1.1.2.1 to include drugs materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970)
19. The Directive does not define "recent," and there is no "bright-line" definition of what constitutes "recent" conduct. ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (Judge did not err by concluding drug use not recent with passage of slightly less than two and a half years between last use and hearing) (citing ISCR Case No. 02-10454 at 4 (App. Bd. Nov. 23, 2004)). *See* ISCR Case No. 98-0611 at 2 (App. Bd. Nov. 1, 1999) (not error for Judge to find that last marijuana use nine months before close of record was not recent).
20. DI MC E2.A8.1.3.2. (*The drug involvement was an isolated or aberrational event*) and DI MC E2.A8.1.3.4. (*Satisfactory completion of a prescribed drug treatment program including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a credential medical professional*) do not apply because no information was provided indicating that Applicant had attended a drug treatment program and he used marijuana on a number of occasions between 1998 and 2005.