

DATE: March 27, 2007

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 06-05906

DECISION OF ADMINISTRATIVE JUDGE

JACQUELINE T. WILLIAMS

APPEARANCES

FOR GOVERNMENT

Emilio Jaksetic, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 26-year-old software developer employed by a defense contractor since June 2004. He used marijuana with varying frequency between September 1998 and November 2004. Applicant has not used marijuana since November 2004. He did not deliberately falsify an answer regarding his drug use in his security clearance application. Applicant has mitigated the drug involvement and personal conduct security concerns. Clearance is granted.

STATEMENT OF THE CASE

On January 27, 2005, ⁽¹⁾ Applicant applied for a security clearance and completed a Security Clearance Application (SF 86). ⁽²⁾ On June 30, 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 modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons under Guideline H (Drug Involvement) and Guideline E (Personal Conduct) 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, and recommended referral to an Administrative Judge to determine whether a clearance should be granted or revoked.

In a sworn, written statement, dated June 29, 2006, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on January 10, 2007. A Notice of Hearing was issued on January 11, 2007, scheduling the hearing for January 31, 2007. The hearing was conducted as scheduled. At the hearing, the Government submitted three exhibits ⁽³⁾ (Gov. Exs. 1-3) and Applicant submitted three exhibits (Exs. 1-3), all of which were admitted into the record without objection. The transcript (Tr.) was received on February 8, 2007.

FINDINGS OF FACT

Applicant admitted all the factual allegations pertaining to drug involvement under Guideline H cited in the SOR, subparagraphs 1.a and 1.b. Those admissions are incorporated herein as findings of fact. He denies the other factual allegation. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is 26 years old and has worked as a software developer for a defense contractor since June 2004. In September 1998, he enrolled in college and was awarded a bachelor of science degree in December 2002.⁽⁴⁾ He is single and does not have children.

Between September 1998 and November 2004, Applicant used marijuana with varying frequency. He first used marijuana as a senior in high school, during Spring break at a hotel with friends from school. His initial use of the drug was based on peer pressure and curiosity. He continued to use it after he started college and through his junior year.⁽⁵⁾ Friends always provided the marijuana.⁽⁶⁾ He smoked marijuana approximately monthly during this time-period.

In March 2003, Applicant used marijuana with an ex-girlfriend, after she requested they use the drug together.⁽⁷⁾ She provided the marijuana. He then used marijuana twice in November 2004, while out partying with friends who provided the drug.⁽⁸⁾ He last used marijuana in November 2004. In December 2004, he was at a party where marijuana was being used, and he opted not to participate in using the drug.⁽⁹⁾

On August 21, 2001, he completed an SF 86 for summer employment with a defense contractor.⁽¹⁰⁾ His summer employment terminated, and his SF 86 continued to be processed. In December 2002, he was interviewed by an agent of the Defense Department regarding his SF 86 submitted in 2001. Unbeknownst to Appellant, he was granted a Secret security clearance on September 27, 2003.⁽¹¹⁾ Applicant's use of marijuana in November 2004 occurred after he was granted a security clearance.

On November 23, 2004, he responded to Question 27 on his SF 86 (*Your Use of Illegal Drugs and Drug Activity - Illegal Use of Drugs Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?*). Applicant answered "yes" and disclosed he used marijuana at least 40 times between September 30, 1998 and November 15, 2002. Applicant acknowledged he made a mistake in answering this question. He indicated it was not intentional on his part. The November 2002 date was a typo, and it should have been November 2004.⁽¹²⁾

Applicant's current employer submitted a "Security Clearance Request" for him on July 7, 2004.⁽¹³⁾ On December 8, 2004, Applicant received a memorandum from the program security officer, informing him that his clearance had been granted.⁽¹⁴⁾ He was to attend the briefing for his clearance on December 16, 2004. Upon his employment in June 2004, Applicant was selected for random drug testing. The result was negative.⁽¹⁵⁾ His employer has not requested another drug test for him.⁽¹⁶⁾ Applicant's use of marijuana in November 2004 occurred after he was granted a security clearance.

Applicant submitted a character reference from his current supervisor who knows of his prior use of marijuana.⁽¹⁷⁾ His manager indicated that in the last two years, she has "watched [Applicant] mature as a professional and as an individual."⁽¹⁸⁾ She can rely on him to complete any tasks assigned. Moreover, Applicant is a leader in the Society of Young Professionals, a group created at work "to promote professional growth and leadership skills." According to his supervisor, "he spends personal time organizing meetings, arranging guest speakers, and promoting the group within the company."⁽¹⁹⁾ She stated, "I have worked in the classified environment for over 20 years, and I have faith in [Applicant] to respect and protect any level of classified information that he is exposed to."⁽²⁰⁾

Applicant's coworker testified he and Applicant met in June 2004, the day they both started working for the same defense contractor.⁽²¹⁾ They have been roommates since June 2005.⁽²²⁾ Whether they are at work, home, or a social

setting, his roommate has never seen Applicant use marijuana. ⁽²³⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. 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. 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 the policy guidance.

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. ⁽²⁴⁾ The Government has the burden of proving controverted facts. ⁽²⁵⁾ The burden of proof is something less than a preponderance of evidence. ⁽²⁶⁾ Once the Government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him. ⁽²⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. ⁽²⁸⁾

No one has a right to a security clearance ⁽²⁹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." ⁽³⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. ⁽³¹⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. ⁽³²⁾ 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

I have carefully considered all the facts in evidence and the legal standards, and I reach the following conclusions.

Drug Involvement

Under Guideline H, a security concern exists for an individual who is improperly or illegally involved with drugs because it raises questions regarding an individual's willingness or ability to protect sensitive information. Drug abuse or dependence may impair social or occupational functions, while increasing the risk of an authorized disclosure of sensitive information. Here, during the period from approximately September 1998 through November 2004, Applicant used marijuana with varying frequency. Consequently, Drug Involvement Disqualifying Condition E2.A8.1.2.1 (*any drug abuse*) applies.

Various conditions can mitigate trustworthiness concerns arising from drug involvement. Here, Applicant, a 26-year-old, stated he was motivated by peer pressure and curiosity to use marijuana. He started using it in high school and continued its use through his junior year in college. He last used marijuana in November 2004. While two years of not using marijuana is not a very long time, it is enough time to show that Applicant has matured and is keen on not using drugs in the future. Moreover, his coworker testified that as roommates, he has never seen Applicant use marijuana at home or in social events away from home. His supervisor, despite knowing of his past drug use, thinks highly of him. Thus, Drug Involvement Mitigating Conditions (DI MC) E2.A8.1.3.1 (*the drug involvement was not recent*) and DI MC E2.A8.1.3.3 (*a demonstrated intent not to abuse any drugs in the future*) apply.

Personal Conduct

Personal conduct under Guideline E is always a security concern because it asks the central question of a person's past conduct justifies confidence the person can be trusted to properly safeguard sensitive information. Applicant omitted a material fact on his SF 86 when he failed to disclose that he used marijuana through November 2004, and not through November 2002. Thus, Personal Conduct Disqualifying Condition E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies.

Various conditions can mitigate trustworthiness concerns arising from personal conduct. Applicant credibly testified that his answer to a question on the SF 86, although incorrect, was not a deliberate falsification. Although he answered that his last use of marijuana was in November 2002, when he gave his sworn statement, he realized that he had given incorrect information. He intended to indicate that his marijuana occurred through November 2004 and not November 2002. Moreover, he has not used marijuana since November 2004. His supervisor vouches for his trustworthiness, despite his unsavory behavior. His coworker, who is also his roommate, knew of Applicant's past use of marijuana and has not seen him use the drug in their home or in a social setting. Thus, Personal Conduct Mitigating Conditions (PC MC) E2.A5.1.3.2 (*the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*) and E2.A5.1.3.5 (*the individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*) apply.

I have considered all the evidence in the case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. As a young, inexperienced, and immature young man, Appellant was curious about marijuana and used it with varying frequency while in high school and during the first three years of college. His last use of the drug was in November 2004, the year before he graduated from college. Appellant, at 26, has matured. He credibly testified about his drug use and how he incorrectly answered a question in his SF 86. He seems remorseful for having used marijuana and the negative impact it has had on his career. His supervisor believes in him and thinks he has learned from his mistakes. His coworker has not seen him use marijuana at home or in other social settings. Applicant has not used marijuana in two years and he was adamant that it was old behavior that he would not revisit. In balancing all the information of record, I conclude Applicant has mitigated the security concerns arising from his financial difficulties. Based on the evidence of record, it is clearly consistent with the national interest to grant Applicant a security clearance. For the reasons stated, I conclude Applicant is suitable for access to classified information.

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 (Drug Involvement): FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Paragraph 2. Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 2.a: For Applicant

DECISION

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

Jacqueline T. Williams

Administrative Judge

1. The SOR states that Applicant signed his SF 86 on February 4, 2005. However, the record before me does not reflect that date.
2. Gov. Ex. 1 (Security Clearance Application, dated January 27, 2005). An SF86 dated August 21, 2001 is attached to this exhibit.
3. Tr. 41.
4. Tr. 18.
5. Gov. Ex. 2 (Applicant's Sworn Statement, dated December 18, 2002). Tr. 23-24.
6. Tr. 24.
7. Tr. 26.
8. Tr. 27.
9. Tr. 30.
10. Tr. 34.
11. Tr. 36.
12. Tr. 58.
13. App. Ex. 2 (Security Clearance Request, dated July 7, 2004).
14. App. Ex. 1 (Memorandum regarding "DoD Collateral Clearance Briefing," dated December 8, 2004).
15. Tr. 49.
16. Tr. 51.
17. Tr. 71.
18. App. Ex. 3 (Letter from Section Manager, dated January 30, 2007).
19. *Id.*
20. *Id.*
21. Tr. 60.
22. Tr. 62.
23. Tr. 65.
24. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
25. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
26. *Dep't of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

27. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, ¶ E3.1.15.

28. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15.

29. *Egan*, 484 U.S. at 531.

30. *Id.*

31. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

32. Executive Order 10865 § 7.