

DATE: November 30, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 06-09400

**DECISION OF ADMINISTRATIVE JUDGE**

**MARY E. HENRY**

**APPEARANCES**

**FOR GOVERNMENT**

Francisco J. Mendez, Jr., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant voluntarily admitted to occasional use of marijuana between 1995 and 1998, and a one-time use of the drug in 2005. He twice declared that he would not use the drug in the future. He has mitigated the government's security concerns under the drug involvement guideline. Clearance is granted.

**STATEMENT OF THE CASE**

On June 12, 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 Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. 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. [\(1\)](#)

On July 2, 2006, Applicant submitted a notarized response to the allegations with attachments. He elected to have his case decided on the written record in lieu of a hearing. [\(2\)](#)

Department Counsel prepared a File of Relevant Material (FORM), and Applicant received a complete copy on October 17, 2006. Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted a response on October 19, 2006. The government does not object to the admission of his response. This case was assigned to me on November 1, 2006.

**FINDINGS OF FACT**

Applicant denied the allegations under Guideline H, subparagraph 1a.<sup>(3)</sup> After a complete review of the evidence in the record and upon due consideration, I make the following findings of fact.

Applicant is a single, 29-year-old manufacturing engineer for a defense contractor. He has worked for this contractor for over two years. Applicant attended college from January 1999 until December 2002, when he graduated. He received a Bachelor of Science degree in mechanical engineering. He completed a security clearance application (SF 86) in June 2005.<sup>(4)</sup>

In 1994, at age 16, he began working at a fast food restaurant. He left this job 5 years later, in February 1999. Using this job as a reference point, he acknowledges using marijuana eight times between January 1995 and early to mid 1998. He was 17 years old when he began experimenting with marijuana in 1995 and 20 when he quit using it. Seven years later, in April 2005, he smoked marijuana on one occasion.

When he completed his security clearance application, Applicant voluntarily declared his marijuana use. In response to the question's request to provide the dates used, he listed his dates of use from January 1995 to April 2005. He further explained that his use was minimal, that nine times was accurate, and that prior to April 2005, he had not used marijuana in 6 or 7 years or longer.<sup>(5)</sup> He clarified this information in his response to the SOR, stating that he first used marijuana at a super bowl party in January 1995, last used around February 1998, and never used marijuana after he left his employment with a fast food restaurant in February 1999 until April 2005. He acknowledged he made a major mistake when he decided to smoke marijuana again in April 2005. He further declared it will never happen again as he does not want to ruin his career. He reaffirmed his intent not to use marijuana in the future in his supplemental response. He never sold or purchased this drug.<sup>(6)</sup> He has never been arrested or charged with any criminal conduct, nor has he been fired from any job for inappropriate conduct.

## 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.<sup>(7)</sup>

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.<sup>(8)</sup> The government has the burden of proving controverted facts.<sup>(9)</sup> The burden of proof is something less than a preponderance of the evidence.<sup>(10)</sup> 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.<sup>(11)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(12)</sup>

No one has a right to a security clearance,<sup>(13)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(14)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(15)</sup>

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. <sup>(16)</sup> 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 established its case under Guideline H. Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1. (*Any drug abuse...*), <sup>(17)</sup> and DI DC E2.A8.1.2.2. (*Illegal drug possession, including cultivation, processing, manufacture, purchase sale, or distribution*) apply. As a teenager and prior to entering college at age 21, Applicant used marijuana, an illegal drug under the Control Substances Act of 1970 on eight occasions. In April 2005, he again used marijuana on one occasion.

After considering all the Drug Involvement Mitigating Conditions (DI MC), I conclude that DI MC E2.A8.1.3.3 (*A demonstrated intent not to abuse any drugs in the future*) applies. <sup>(18)</sup> Applicant has demonstrated an intent not to use drugs in the future through his credible assertion he would not

ruin his career by smoking marijuana in the future. He now understands the seriousness of his wrong decision in April 2005.

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.

While a high school student, Applicant experimented with and used marijuana for about three years. His use was sporadic and occasional. He stopped smoking marijuana in 1998, and refrained from using it for almost seven years. His overall use of this drug does not reflected that he has a drug problem or a pattern of marijuana use. He readily admitted his marijuana use when completing his security clearance application and has acknowledged he made a major mistake when he used this drug again for recreational purposes in 2005. He knows that if he uses marijuana again, it could seriously impact his career. I have weighed these positive factors against his most recent one time use, and concluded that there is little likelihood that he will smoke marijuana in the future. He has never been arrested for any criminal conduct, his finances are solid, and his employers have been satisfied with his work. The potential for pressure, coercion, exploitation, or duress does not exist, nor is he likely to mishandle security matters. Guideline H is found in favor of Applicant. 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:

Paragraph 1, Guideline H: FOR APPLICANT

Subparagraph 1.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. Item 1 (Statement of Reasons, dated June 12, 2006) at 1-2.
2. Item 3 (Applicant's response to SOR, dated July 2, 2006) at 1.
3. *Id.*
4. Item 4 (Applicant's security clearance application, dated June 4, 2005), at 1, 4-5, 7-8, 12.
5. *Id.* at 20-21.
6. Item 3, *supra* note 2, at 2; Supplemental response to FORM, dated October 71, 2006, at 1.
7. Directive, Enclosure 2, ¶ E2.2.1.1. through E2.2.1.9.
8. ISCR Case No. 96-0277 at 2 (App. Bd., July 11, 1997).
9. ISCR Case No. 97-0016 at 3 (App. Bd., December 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
10. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
11. ISCR Case No. 94-1075 at 3-4 (App. Bd., August 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
12. ISCR Case No. 93-1390 at 7-8 (App. Bd. Decision and Reversal Order, January 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
13. *Egan*, 484 U.S. at 531.
14. *Id.*
15. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
16. Executive Order No. 10865 § 7.
17. 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.
18. DI MC E2.A8.1.3.1. (*The drug involvement was not recent*), 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, he used marijuana several times a year between 1995 and 1998, and his use of the drug in 2005 is 20 months in the past.