

DATE: March 21, 2007

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 06-11170

## **DECISION OF ADMINISTRATIVE JUDGE**

**EDWARD W. LOUGHRAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

James F. Duffy, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a 56-year-old employee of a defense contractor. He occasionally smoked marijuana from about 1974 to 1978. Applicant became a father, started his first job and stopped smoking marijuana, as acceptance of his new responsibilities. Applicant divorced in 2001, and started smoking marijuana again, because he was "curious" to try it. He purchased a quantity of marijuana in 2001, and still possessed some of it as recently as about two months before his hearing, when he disposed of the remaining marijuana. Applicant last smoked marijuana some time in 2005, or early 2006. He is unable to totally rule out the possibility of smoking marijuana in the future. Clearance is denied.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On June 21, 2006, DOHA issued a Statement of Reasons<sup>(1)</sup> (SOR) detailing the basis for its decision-security concerns raised under Guideline H (Drug Involvement) of the Directive. In an undated response, Applicant answered the SOR and elected not to have a hearing before an administrative judge. On January 21, 2007, Applicant changed his request and elected to have a hearing before an administrative judge. He further requested the hearing be held in Arlington, Virginia. The case was assigned to me on February 12, 2007. A notice of hearing was issued on February 13, 2007, scheduling the hearing for February 21, 2007. Applicant waived the 15 day written notice requirement. With the consent of the parties, the hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government offered one exhibit that was marked as Government Exhibit (GE) 1, and admitted without objection. Applicant testified, but did not offer any exhibits. DOHA received the hearing transcript (Tr.) on March 9, 2007.

### **FINDINGS OF FACT**

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 56-year-old employee of a defense contractor. Applicant holds a Ph.D. He is divorced, with two adult children.<sup>(2)</sup>

Applicant experimented with marijuana as a young man. He smoked marijuana periodically from about 1974 until 1978, a period which coincided with Applicant's time in graduate school. Applicant's first child was born in 1978, and he started his first job. Applicant did not believe that smoking marijuana was consistent with the actions of a responsible adult and he stopped smoking marijuana.<sup>(3)</sup>

Applicant was divorced in about 2001, after a long marriage. After his divorce, Applicant decided to start smoking marijuana because he "was just curious to see, try it again."<sup>(5)</sup> Starting in about 2001, he smoked marijuana periodically. It was usually done in a social environment at Applicant's home, or the home of a friend. Applicant purchased marijuana in about 2001. He kept the marijuana at his house, and would smoke it and share it with friends. Applicant last smoked marijuana some time in 2005, or possibly early 2006. On many of the occasions that Applicant smoked marijuana, it was with a woman that he was dating. Applicant is no longer dating that woman. Applicant disposed of his remaining marijuana about two months before his hearing.<sup>(6)</sup>

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on October 5, 2005. Applicant freely admitted his marijuana use on the questionnaire.<sup>(7)</sup> In about January 2006, Applicant was interviewed by an investigator pursuant to his background investigation. He was questioned about his marijuana use, and asked if he intended to use marijuana in the future. He answered something to the effect of, "well, yes, maybe." At that point, Applicant felt that he might continue to smoke marijuana, so long as it did not have an adverse impact on his job.<sup>(8)</sup>

Applicant believes there is nothing wrong with adults smoking marijuana, so long as it is used in a responsible way.<sup>(9)</sup> Applicant has never received counseling or treatment for his substance abuse.<sup>(10)</sup> He testified that it would be easy to imagine himself never using marijuana again, and that he certainly would not buy marijuana again.<sup>(11)</sup> He could not totally rule out the possibility of smoking marijuana again:

If I was in a job where the security clearance wasn't in effect and I was at a party and somebody offered me some marijuana and I was not in a position where I had to drive anyplace, I don't know. I may, but I could easily also imagine myself never using it again.<sup>(12)</sup>

Applicant is a totally truthful person. His admissions about the possibility of using marijuana in the future exhibit his willingness to tell the absolute truth. He has served in positions of responsibility in his employment, in local government, and in education. He is a highly skilled professional, a respected member of his community, and the proud father of two daughters.<sup>(13)</sup>

## **POLICIES**

"[N]o one has a 'right' to a security clearance."<sup>(14)</sup> 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."<sup>(15)</sup> The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."<sup>(16)</sup> An applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.<sup>(17)</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>(18)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. 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.<sup>(19)</sup>

The Directive sets forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each 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 adjudicative process factors listed in ¶ 6.3 and ¶ E2.2.1 of the Directive.

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

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

### **Guideline H, Drug Involvement**

Improper or illegal involvement in 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.

The information presented by the Government of Applicant's use of marijuana from 1974 to 1978, and again between 2001 and 2005 or 2006, raises Drug Involvement Disqualifying Condition (DI DC) ¶ E2.A8.1.2.1 (*Any drug abuse*). Every time Applicant smoked marijuana, he also possessed marijuana. Applicant admitted that he purchased marijuana, and only disposed of his remaining marijuana about two months before the hearing. This raises DI DC ¶ E2.A8.1.2.2 (*Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*). Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction. Marijuana is a mood or behavior altering substance that is banned under the Controlled Substance Act of 1970.

The Department of Defense is prohibited by 10 U.S.C. §986(c)(2) from granting a security clearance to an applicant who is "an unlawful user of" a controlled substance. The prohibition applies to persons who are "currently" unlawful users of controlled substances.<sup>(20)</sup> Applicant does not currently use any controlled substance. I conclude 10 U.S.C. §986(c)(2) is not applicable to this case, and does not serve as an absolute bar to the granting of a security clearance to Applicant.

The Drug Involvement Mitigating Conditions (DI MC) to consider in Applicant's case are ¶ E2.A8.1.3.1 (*The drug involvement was not recent*); ¶ E2.A8.1.3.2 (*The drug involvement was an isolated or aberrational event*); ¶ E2.A8.1.3.3 (*A demonstrated intent not to abuse any drugs in the future*); and ¶ 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 credentialed medical professional*).

There is no "bright line" rule as to what constitutes "recent" under the Directive.<sup>(21)</sup> The determination must be based "on a careful evaluation of the totality of the record within the parameters set by the directive."<sup>(22)</sup> If the evidence shows "a significant period of time has passed without any evidence of misconduct," then an administrative judge must determine whether that period of time demonstrates "changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation."<sup>(23)</sup> Applicant's last use of marijuana was in 2005, or possibly 2006. However, he continued to possess marijuana until about two months before the hearing. This is recent drug involvement, and DI MC ¶ E2.A8.1.3.1 does not apply.

Applicant admitted using marijuana for a four-year period. Clearly this was not an isolated or aberrational event. DI MC ¶ E2.A8.1.3.2 is not applicable.

Applicant used marijuana as a young adult in a school environment for about four years. He had his first child, and started his first job. Applicant believed marijuana use was inconsistent with his new responsibilities, and he stopped using marijuana. Applicant did not use marijuana for more than twenty years. He went through a divorce and then starting using marijuana again in 2001, out of curiosity. Applicant is a truthful man, and would not totally rule out the

possibility of smoking marijuana again. Applicant has failed to show a demonstrated intent not to abuse any drugs in the future. DI MC ¶ E2.A8.1.3.3 is not applicable.

Applicant has never received counseling or treatment for his marijuana use. DI MC ¶ E2.A8.1.3.4 is not applicable.

### **Whole Person Analysis**

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive.

In Applicant's case, I have considered every finding of fact and conclusion discussed above. Applicant is a well educated professional, who has worked in positions of responsibility, and is highly regarded in his community. I also found him to be extremely truthful. However, his involvement with marijuana is not consistent with him being granted a security clearance. It appears Applicant was more mature in 1978, when he gave up marijuana, than he has been since 2001, when he resumed smoking marijuana out of curiosity. Applicant's dalliance with marijuana as a young man is understandable, but his disregard for the law, as an otherwise responsible adult in his 50s, is not.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on his drug involvement.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline H: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

### **DECISION**

In light of all of 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.

Edward W. Loughran

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).

2. Tr. at 17; GE 1.

3. (4)

4. Tr. at 19-20, 36; Applicant's response to SOR. - - '

5. Tr. at 40-41.

6. *Id.* at 19-23, 28-30, 36.
7. GE 1.
8. Tr. at 31-32.
9. *Id.* at 32-33.
10. *Id.* at 36.
11. *Id.* at 43-44.
12. *Id.* at 44.
13. *Id.* at 48-50.
14. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
15. *Id.* at 527.
16. Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).
17. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
18. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
19. Exec. Or. 10865 § 7.
20. ISCR Case No. 03-25009 at 4 (App. Bd. Jun. 28, 2005).
21. *See, e.g.*, ISCR Case No. 02-10454 at 10 (App. Bd. Nov. 23, 2004).
22. ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004).
23. *Id.*