

DATE: November 17, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 06-12317

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Melvin Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 27 years old and worked for a federal contractor since June 2004. During his high school and college years he used drugs and sold some drugs to his friends, although not for profit. Two and half years ago he made a conscious decision to no longer use illegal drugs. He decided it was time to grow up and lead a productive life. He has not used drugs since then. He has mitigated the security concerns regarding his drug involvement. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant a security clearance for Applicant. On June 23, 2006, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision—security concerns raised under Guideline H, (drug involvement) of the Directive. Applicant answered the SOR in writing and it was received at DOHA on August 18, 2006. In his Answer he elected to have a hearing before an administrative judge and admitted all of the allegations under Guideline H. The case was assigned to me on October 2, 2006. A notice of hearing was issued on October 3, 2006, scheduling the hearing for October 25, 2006. I conducted the hearing as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance. The Government offered one exhibit for admission in the record and it was marked as Government Exhibit (GE) 1. The exhibit was admitted into evidence without objection. The Government requested five exhibits be considered for judicial notice and six exhibits for administrative notice. All were accepted without objection. Applicant testified on his own behalf and offered five exhibits for admission to in the record. They were marked as Applicant's Exhibits A-E and were admitted into evidence without objection. The record was left open to allow Applicant an opportunity to submit additional documentation. He did so in a timely manner and the exhibits were marked as AE F-H. The Government did not object and they were included in the record and admitted into evidence. DOHA received the hearing transcript (Tr.) on November 2, 2006.

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 27 years old and graduated from college with an engineering degree in 2003. After completing an internship, that was started in his last year of school, he accepted a full time job with a federal contractor in June 2004, relocated to a new city and began his career. Applicant has been promoted approximately 18 months ahead of schedule. He has assisted his father, who lost his job, by paying his mortgage for five months. He is the first in his family to receive a college education. Two of his three siblings, have graduated from high school and are following in his footsteps to receive a college education. His other sibling is completing high school.

Applicant admitted that from 1994 to 2004 he used different illegal drugs, in varying degrees, and at various times. He was in high school and college at the time. The drugs include: cocaine, nitrous oxide, Valium (without a prescription), ecstasy, Foxy, marijuana, Ketamine, mushrooms, LSD and Absinthe. He admitted that he purchased cocaine on at least two occasions and sold it once; he purchased ecstasy 15 times and sold it two or three times; he purchased marijuana 9-10 times and sold it two or three times; he purchased Ketamine on at least 3 occasions; he purchased LSD on 7-9 occasions. He used mushrooms as an hallucinogen on at least five occasions. (3) He also admitted he purchased drugs for friends. He never sold drugs for a profit, but only to provide it for his friends. (4) Most of the drugs listed are controlled substances and their use is illegal. Some drugs he used are legal, but he was not prescribed their use. The chemical compound of Nitrous oxide is legal, but its inappropriate use is illegal. Absinthe is a legal substance, but it is illegal to import it into the U.S.

Applicant used drugs because he was curious and not as an escape. He was shy and it helped his inhibitions. He became involved in the "rave" drug culture and it was there that he accelerated his drug use. He worked as a disc jockey for some of the "rave" events.

After graduating from college Applicant realized it was time to grow up and he no longer was interested in drugs. He decided he did not want the type of life that was part of the drug culture. He sold all of his disc jockey equipment and no longer attended "rave" events. He wanted a fulfilling future and knew that the culture he was a part of would not help him in that endeavor. He accepted an engineering job in a distant city. He no longer has any association with those involved in the "rave" culture. He does have some contact with friends that used drugs, but they too have matured, graduated college, accepted jobs, got married and started families, i.e. they have become responsible adults, who no longer use drugs.

Applicant is involved in healthy life choices. He snowboards, hikes, kayaks, waterskis, and has hobbies that involve outdoor activities. He drinks alcohol occasionally with friends while watching television. He has a girlfriend who lives in the same city as Applicant, but when she was diagnosed with cancer she moved home for support. Applicant travels across country once a month to visit and support her during her treatment.

Applicant has not used drugs in over two years and does not intend to use them ever again. He has moved past that part of his life. He envisions his future as a bright one with increasing job prospects, marriage and perhaps children. Applicant's testimony was credible and he never wavered in admitting his past. His family, friends and coworkers are aware of his drug history. He believes what is important is integrity, family and friends.

In October 2006, Applicant voluntarily attended a drug counseling program to be screened for possible drug issues. The facility he attended is accredited by the Commission on Accreditation of Rehabilitation Facilities and the Division of Alcohol and Substance Abuse for his resident state. (5) His counselor is licensed as a Chemical Dependency Professional through the resident state. He provided the counselor with his background and collateral drug history. A complete alcohol and drug evaluation was conducted. The recommendation of the drug counselor was that Applicant attend a drug awareness class to teach him to better handle any potential issues that may arise regarding making good choices when it involves drugs. (6) Applicant voluntarily went to the counseling session and awareness class at his own expense. (7)

Applicant's supervisor views him as very productive and his performance has been well above expectations. He is considered conscientious about ethics and following procedures and is proactive in ensuring everything is completed

(8)

correctly. He is friendly, caring and considerate. The manager that hired Applicant considers him dependable and a strong performer with great enthusiasm and a strong work ethic. He was promoted early because of his contribution to the program.⁽⁹⁾ Applicant's roommate considers him a reliable and responsible friend, who is honest and dependable. During the year they have shared an apartment he has never seen Applicant use drugs.⁽¹⁰⁾

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 this 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.⁽¹¹⁾ The government has the burden of proving controverted facts.⁽¹²⁾ The burden of proof is something less than a preponderance of evidence.⁽¹³⁾ 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.⁽¹⁴⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁵⁾

No one has a right to a security clearance⁽¹⁶⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁷⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹⁸⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹⁹⁾ 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 consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline H-Drug Involvement is a security concern because 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.

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

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline H.

Based on all the evidence, Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1 (*Any drug abuse*⁽²⁰⁾), DI DC E2.A8.1.2.2 (*Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*), apply. Applicant used numerous illegal drugs and legal drugs without a prescription, with varying

frequency, and at various times, depending on the drug, from 1994 to 2004. He also possessed the same drugs and in some instances distributed drugs and sold them, although not for profit.

I considered all the mitigating conditions and especially considered Drug Involvement Mitigating Condition (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*), DI MC E2.A8.1.3.3 (*A demonstrated intent not to abuse any drugs in the future*) 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 credentialed medical professional*).

Applicant has not used drugs since moving to a new state and starting a new job over two years ago. Applicant has not used drugs recently. Therefore, DI MC E2.A8.1.3.1 applies. Applicant's past drug use over a ten year period, using various kinds of illegal drugs can not be considered isolated or aberrational. DC MC E2.A8.1.2 does not apply. Applicant has totally changed his behavior in the two and a half years since he moved and started a career. He no longer lives in the same state as the friends he associated with when using drugs. He has made a good faith and conscientious effort to change his lifestyle. He is fully engaged in outdoor activities. On his own accord he sought drug counseling so he could be evaluated about his potential for further abuse and gain guidance on how to handle circumstances that may arise surrounding drugs. He is committed to remaining drug free and has reached a maturity and understanding about drugs. Most telling is that he acknowledges he has grown up and wants more out of life and does not want to jeopardize his career and family potential. He has totally left his drug life behind him. I find DI MC E2.A8.1.3.3 applies. Although DI MC E2.A8.1.3.4 does not technically apply, I considered Applicant's proactive attitude in seeking counseling to ensure he has the right behavioral and emotional tools to deal with any issues that may arise regarding future drug temptations. He voluntarily attended the counseling and paid for it himself. Applicant is rehabilitated and illegal drugs are no longer a part of his life. His actions and behavior are precisely the type that reflect a revelation about his past conduct and a commitment to living a drug-free law-abiding lifestyle.

Whole Person Analysis

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

When considering the whole person, I considered the length of time that Applicant engaged in drug use and the numerous types of drugs he used. I considered that he distributed drugs and sold them to his friends. I also considered his young age, his maturity, and the motivation for why he used drugs. I considered his motivation for stopping his use and what he has accomplished since then. He is focused on his career, has received a promotion, and is providing support for his girlfriend who is going through cancer treatments. His outside activities reflect a wholesome lifestyle and he voluntarily sought counseling. Weighing all the variables and the whole person, I find Applicant successfully mitigated the drug involvement security concern. Therefore, I am persuaded by the totality of the evidence in this case, that it is clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline H is decided for 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-1.k. For Applicant

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant or continue a

security clearance for Applicant. Clearance is granted.

Carol G. Ricciardello

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960) as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. Tr. 33-35.
4. TR. 23-24.
5. AE F, G and H.
6. AE D.
7. AE E.
8. AE A.
9. AE B.
10. AE C.
11. ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).
12. ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
13. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
14. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
15. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
16. *Egan*, 484 U.S. at 531.
17. *Id.*
18. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
19. Executive Order 10865 § 7.
20. E2.A8.1.1.2.1 defines drug abuse as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.