

DATE: March 19, 2007

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 06-18705

**ECISION OF ADMINISTRATIVE JUDGE**

**CAROL G. RICCIARDELLO**

**APPEARANCES**

**FOR GOVERNMENT**

Caroline H. Jeffreys, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 23 years old and has worked for a defense contractor since August 2005. Applicant abused many different illegal drugs and misused prescription drugs over a several year period. He also sold and distributed a large amount of cocaine for profit. Applicant failed to provide sufficient information to mitigate the security concerns raised by his drug involvement. Clearance is denied.

**STATEMENT OF CASE**

On August 29, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. <sup>(1)</sup> The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline H, drug involvement.

In a sworn statement dated September 28, 2006, Applicant responded to the SOR allegations. Applicant elected to have his case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on November 21, 2006. The FORM was mailed to Applicant on November 22, 2006, and received on November 28, 2006. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded on January 5, 2007. Department Counsel had no objections. The case was assigned to me on February 2, 2007.

**FINDINGS OF FACT**

Applicant is 23 years old and has worked as a software engineer for a defense contractor since August 2005. <sup>(2)</sup> Applicant is a college graduate and unmarried.

Applicant admitted that he used marijuana, with varying frequency, from approximately May 2000 until May 2003. He

admitted he used Hydrocone without a prescription, Oxycodone without a prescription, amphetamines, and cocaine, all with varying frequency from approximately September 2002 to May 2005. He admitted he used heroin approximately five times, morphine approximately five times, codeine approximately five times, LSD approximately twice, from approximately September 2002 to May 2005. He also admitted that he purchased a large amount of cocaine in either 2003 or 2004 and sold this cocaine to friends and acquaintances for profit. Applicant stated he has not used illegal drugs since May 19, 2005, and does not intend to in the future. No other information was provided by Applicant.

## 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.<sup>(3)</sup> The government has the burden of proving controverted facts.<sup>(4)</sup> The burden of proof is something less than a preponderance of evidence.<sup>(5)</sup> 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.<sup>(6)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(7)</sup>

No one has a right to a security clearance<sup>(8)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(9)</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>(10)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(11)</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 consideration of all 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.

Based on all the evidence, Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1 (*Any drug abuse*<sup>(12)</sup>) and DI DC E2.A8.1.2.2 (*Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or*

*distribution*) apply. Applicant used and possessed numerous illegal drugs and misused prescription drugs, with varying frequency, from approximately May 2000 to May 2005. He also purchased a large amount of cocaine and sold it 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's drug use was frequent and it has only been approximately 20 months since he claimed he stopped using drugs. His drug use was not confined to a certain drug, but involved a cornucopia of drugs, several of which are considered "hard" drugs. Applicant frequently misused prescription drugs. He did not provide any information on what behavioral changes he has made to remain committed to not abusing drugs. He merely offers that he has not used drugs since May 2005, and that he does not intend to use drugs in the future. He did not provide information as to whether he still associates with the people he used drugs with. He did not provide any amplifying information about his large purchase and then distribution of cocaine for a profit. I do not have information as to who he sold the drugs to, how much profit he made, why he resorted to selling drugs, e.g., to support a habit or merely to make money. He did not provide information as to what, if any, drug treatment he completed, or a prognosis of whether there is a likelihood of recurrence. I have no information as to why he used all of these illegal and prescription drugs over a long period of time. I have not had the opportunity to judge his credibility. Considering the sheer number of different types of illegal and prescription drugs he abused, and the significant period of time he abused them, it does not reflect a mere curiosity of a youthful offender. Rather, he abused marijuana, amphetamines, and cocaine for several years with varying frequency. The other drugs he used from 20 times to twice, interspersed during the same time he was abusing the previous mentioned drugs. Without more information I am unable to determine Applicant has made lifestyle and behavioral changes to support and corroborate that he has not used drugs in the recent past or that he will be successful in refraining from drug abuse in the future. Therefore, I find none of the mitigating conditions apply.

### **The 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.

I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I considered the types of drugs, the number of different drugs, the number of times he used them, and his purchase of cocaine and then distribution of the drug for profit. The only information presented in mitigation by Applicant was a written statement that he has ceased using drugs and does not intend to use them in the future. Because of the limited information he has provided to mitigate the security concerns, I am left with merely evaluating his written statement without benefit of a credibility determination or any other information about his drug use, background and subsequent actions. I considered the lengthy period of time he abused many different types of drugs and the relatively short time that has elapsed since he stated he has ceased using drugs. I find Applicant has failed to mitigate the security concerns raised by the drug involvement. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline H is decided against 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 drug involvement (Guideline H) AGAINST APPLICANT

Subparagraph 1.a. Against Applicant

Subparagraph 1.b. Against Applicant

Subparagraph 1.c. Against Applicant

Subparagraph 1.d. Against Applicant

Subparagraph 1.e. Against Applicant

Subparagraph 1.f. Against Applicant

Subparagraph 1.g. Against Applicant

Subparagraph 1.h. Against Applicant

Subparagraph 1.i. Against Applicant

Subparagraph 1.j. Against Applicant **DECISION**

In light of all 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.

Carol. G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

2. Applicant disputes the Department Counsel's assertion that he began work on May 21, 2005. This date was taken from information provided by Applicant on his security clearance application, as the date he started work with his employer. In his subsequent response to the FORM he stated he began work on August 29, 2005.

3. ISCR Case No. 96-0277 at 2 (App. Bd. Jul. 11, 1997).

4. ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

5. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

6. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

7. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

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

9. *Id.*

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

11. Executive Order 10865 § 7.

12. 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.