

December 31, 1996

In RE:

SSN:

Applicant for security clearance

DOHA OSD Case No. 96-0471

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

Appearances

FOR THE GOVERNMENT

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FOR THE APPLICANT

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**STATEMENT OF CASE**

On June 21, 1996, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The SOR is attached.

Applicant filed an Answer to the SOR on August 26, 1996.

The case was received by the undersigned on October 7, 1996. A notice of hearing was issued on October 17, 1996, and the case was heard on November 20, 1996. The Government submitted documentary evidence, and called one witness to testify. Testimony was taken from the Applicant, who also called one witness to testify on his behalf. The transcript was received on December 4, 1996. The issue raised here are whether the Applicant's admitted drug abuse militates against the granting of a security clearance.

**FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 50 years of age, has a doctorate in physics, and is employed by a defense contractor as an "on call" consultant. He currently has a secret security clearance, and his employer seeks retention of this level clearance on behalf of the Applicant.

Criterion H - Drug involvement.

1.a.~1.c. and 1.e. The Applicant first used marijuana in 1967 (Government Exhibit (GX) 2 at page 1). "Between 1967 and 1973, . . . [he] would smoke marijuana socially two or three times weekly, in amounts from 1/4 to ½ joint." (GX 2 at page 1). Later, he "did smoke marijuana approximately four times yearly at social events. . . . approximately 1/4 - ½ joint or a few hits off a pipe that was being passed around. This practice went from 1973 to 1990 . . ." (GX 2 at page 1). Since 1991 or 1992, he smokes "marijuana from a small pipe once or twice a week, usually in the evening or on weekends to relax." (GX 2 at page 1). The Applicant last used marijuana "in the April/May time frame" of this year (Transcript (TR) at page 27 lines 1~13).

The Applicant used marijuana after having been granted a security clearance in April of 1974, and "probably will" use it in the future (TR at page 43 line 21 to page 44 line 19). The Applicant has also purchased marijuana on several occasions (TR at page 24 line 1 to page 25 line 25).

1.d. The Applicant used cocaine once in 1967 (TR at page 28 lines 9~17, and GX 2 at page 2).

### Mitigation.

The Applicant offers little in the way of mitigation, except for laudatory testimony as to his obvious technical expertise (TR at page 46 line 13 to page 48 line 22).

Considering all of the evidence, and in light of the fact that the Applicant's used marijuana about six months ago, the Applicant bears a heavy burden of persuasion in demonstrating his suitability for security clearance access.

## **POLICIES**

Enclosure 2 and Section F.3. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. The conditions should be followed in every case according to the pertinent criterion, however, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security clearance case presents its own unique facts and circumstances, it should not be assumed that these conditions exhaust the realm of human experience, or apply equally in every case. Conditions most pertinent to evaluation of this case are:

### Drug Involvement

#### Conditions that could raise a security concern:

- (1) any drug abuse (drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction).
- (2) illegal drug possession, including . . . purchase.

#### Conditions that could mitigate security concerns:

none.

As set forth in the Directive, "[each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature and seriousness of the conduct and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with

knowledge of the consequence involved.

e. Absence or presence of rehabilitation.

f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must make out a prima facie case under Criterion H (drug involvement) which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

The improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places. If an applicant has demonstrated a lack of respect for the law in his private affairs, then there exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

### **CONCLUSIONS**

The Applicant's admitted drug abuse spans a period of about 30 years. Although he has not used cannabis for about six months, he candidly admits to his intention to use it in the future. I must therefore conclude that his continuing drug abuse is clearly of present security significance.

Considering all the evidence, the Applicant has not rebutted the Government's prima facie case regarding his drug involvement. The Applicant has thus not met the mitigating conditions of Criterion H, and of Section F.3. of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Criteria H.

### **FORMAL FINDINGS**

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

### **DECISION**

In light of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national

security to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge