

December 3, 1996

In RE:

Applicant for Security Clearance

ISCR Case No. 96-0501

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

Appearances

FOR THE GOVERNMENT

Melvin Howry

Department Counsel

FOR THE APPLICANT

Pro Se

STATEMENT OF THE CASE

On July 12, 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) (copy appended) to (Applicant), which 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

The applicant responded to the SOR in writing on July 31, 1996. The case was received by the undersigned on October 16, 1996, and a Notice of Hearing was issued on October 18, 1996. A hearing was held on November 19, 1996.

FINDINGS OF FACT

Applicant is a twenty-five year old married man.

Applicant used marijuana with varying frequency, at times four or five times per week, from approximately February 1989 to March 1995.

While attending college during the period 1990-1993, applicant also used the following illegal drugs: psilocybin two to four times, LSD four to six times, hashish once or twice, PCP once, hashish oil once, cocaine once, and mescaline once or twice. During the same time period (1990-1993), he used the following legal drugs without a prescription: Tylenol III (with codeine) twice, Percocet once or twice, Demoral once, and Valium once. Applicant purchased (for his own use) all of the illegal drugs that he used.

Except for his use of marijuana, all of applicant's illegal drug use ended by the time he graduated from college with a B. S. Degree in May 1994. As to marijuana, he continued to use it on a monthly basis until March 1995, when he met his wife. His wife's opposition to drug use, together with applicant's realization that his "partying" days were over and his professional life was beginning, resulted in applicant's decision to cease all use of illegal drugs. Applicant testified,

credibly, that he does not intend to use illegal drugs in the future.

Prior to being hired by his current employer in August 1995, applicant took and passed a drug test (Exhibit J). He took and passed a second drug test in November 1996 (Exhibit K).

Letters from numerous individuals who have worked with applicant at his current place of employment, including a former supervisor, were admitted in evidence (Exhibits B through F). These letters establish that applicant is considered to be a reliable, trustworthy individual. In addition, these letters, together with a performance review admitted in evidence (Exhibit G), establish that applicant does an excellent job for his employer.

POLICIES

Enclosure 2 of the Directive sets forth the Adjudication Policy (divided into Disqualifying Factors and Mitigating Factors) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Disqualifying Factors and Mitigating Factors are applicable:

DRUG INVOLVEMENT

Disqualifying Factors:

1. Any drug abuse
2. Illegal drug possession

Mitigating Factors:

1. The drug involvement was not recent.
3. A demonstrated intent not to abuse any drugs in the future.

CONCLUSIONS

In DOHA cases, the Government has the initial burden of producing evidence that reasonably suggests an applicant cannot be relied upon to safeguard classified information. If the Government meets its burden, it has established a prima facie case. Once the Government establishes a prima facie case, the burden shifts to applicant to produce evidence in refutation, extenuation, mitigation or reformation sufficient to establish that, notwithstanding the Government's prima facie case, he or she can be relied upon to safeguard classified information. In view of the Directive's requirement that a security clearance be granted only upon a finding that to do so is clearly consistent with the national interest, the applicant has a heavy burden.

In this case, the Government established a prima facie case under Criterion H. The evidence establishes that applicant used marijuana with varying frequency, at times four or five times per week, from approximately February 1989 to March 1995, and abused numerous other drugs while he was in college during the period 1990-1993; namely, psilocybin, LSD, hashish, hashish oil, PCP, cocaine, mescaline, Tylenol III with codeine, Percocet, Demoral, and Valium. Applicant's abuse of these drugs reflects adversely on his judgment, reliability and trustworthiness, and reasonably suggests that he cannot be relied upon to safeguard classified information for at least two reasons:

First, individuals granted access to classified information are responsible for safeguarding it twenty-four hours per day, seven days per week, on and off the job. An applicant who abuses marijuana, or any of the other drugs that applicant abused, cannot be relied upon to meet his or her security responsibilities because the risk of an unauthorized disclosure of classified information through neglect or inattention while "high" on these drugs is too great.

Second, applicant used these drugs for many years with full knowledge that each time he used them he was breaking the law. This suggests that applicant may be unwilling to abide by security regulations if he finds them in conflict with his personal wishes or desires.

Applicant testified that he has not used an illegal drug since March 1995, and does not intend to use illegal drugs in the future. Considering the evidence as a whole, including applicant's demeanor and conduct while testifying, I find this testimony to be credible and worthy of belief.

In view of applicant's nineteen months of abstinence, his credible testimony that he does not intend to use of illegal drugs in the future, and the very favorable evidence in the record concerning his reliability and trustworthiness, I conclude that applicant has reformed, and in all likelihood, will not use illegal drugs in the future. For this reason, Criterion H is found for applicant.

FORMAL FINDINGS

PARAGRAPH 1: FOR THE APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for applicant.

Joseph Testan

Administrative Judge