

DATE: March 19, 1997

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In Re:)

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-----) ISCR OSD Case No. 96-0722

SSN: -----)

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Applicant for Security Clearance)

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DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

Appearances

FOR GOVERNMENT FOR APPLICANT

Earl C. Hill, Jr., Esq. **Pro Se**

Department Counsel

STATEMENT OF THE CASE

On September 30, 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 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 granted, continued, denied or revoked.

Applicant responded to the SOR on October 11, 1996 and elected to have his case determined on the basis of the written record. Applicant was furnished copies of the File of Relevant Materials (FORM) on December 31, 1996 and is credited with receiving them on February 10, 1997.

STATEMENT OF FACTS

Applicant is 31 years of age and has been employed by his current defense contractor (Company A) since June 1995. He seeks a security clearance at the level of secret.

Summary of Allegations and Responses

Applicant is alleged to have (1) used marijuana with varying frequency, in about 1978 and from about 1984 to at least the Summer of 1988, (2) been removed from his Government employment in State A on January 6, 1995 for unauthorized absence, possession of an illegal substance (marijuana) while on Government premises and while on temporary duty, and deliberate misrepresentation of a material fact in connection with an official investigation, which

concluded in a compromise understanding which permitted his employment record to reflect "a resignation after being presented with a letter of removal, " and (3) been charged on June 5, 1995 in State A with possession of marijuana, pleaded guilty and was fined approximately \$100.00 plus costs, court required to perform 100 hours of community service and awarded probation for 2 years.

Additionally, Applicant is alleged to have (a) falsified his Questionnaire for Sensitive Position (SF171), executed on November 13, 1992, by answering in the negative the posed question as to whether he ever forfeited collateral, was convicted, imprisoned, been on probation, or on parole within the previous 10 years, omitting his prior arrest on December 30, 1995 in State A for public indecency, importuning and resisting arrest, for which he was found guilty of public indecency and importuning and fined \$50.00 (suspended) and awarded probation for 6 months, (b) falsified his Questionnaire for National Security Positions (SF86), executed on December 29, 1992, by denying he had used any illegal substances within the previous 5 years, omitting his prior use of marijuana, (c) falsified his pre-employment letter attached to his resume, executed on March 20, 1995, and tendered to his current defense contractor, by misrepresenting his reasons for his separation from the Government on January 6, 1995, (d) falsified his National Agency Questionnaire ("NAQ") of November 6, 1995, by omitting his December 1985 citation and charge in State A and (e) falsified his November 6, 1995 NAQ, by understating his past use of marijuana.

And Applicant is alleged to engaged in a pattern of criminal conduct by dint of his (i) cited arrests and (ii) falsifications.

For his response to the SOR, Applicant admits most of the covered allegations, denying only that (a) his falsifications reflect adversely on his judgment and trustworthiness (claiming his service in responsible positions within the community and professionally) and (b) he has a criminal history pattern. For explanations, Applicant assures that (i) his marijuana use was only of a random nature, (ii) his removal notation in his Government record would be confined to the quoted explanation given the pending status of the matter in the courts, (iii) his marijuana possession that resulted in his June 1995 State A charges was not a knowing possession (corroborated by a negative drug screen), (iv) his record falsifications were the result of either mistaken omissions, the advice of his attorney or pending legal considerations, and were not motivated by any desire to conceal, and (v) his several incidents of poor judgment will never again effect his professional judgment, reliability and trustworthiness.

Relevant and Material Findings

Applicant was introduced to marijuana in 1978 at the age of 13 while at a party. He did not resume use of the substance until Summer 1984 when he tried it again. Between Summer 1984 and 1986, he estimates to have used marijuana 2 to 3 times a month. He increased his use to 1 to 2 times a week in 1986 while a college junior. He continued using marijuana on an irregular basis between 1986 until Summer 1988, sometimes going as much as 2 months without any use at all. While there are third party claims by Air Force (AF) investigators of Applicant's smoking marijuana with friends in his billeting quarters on the evening of arch 25, 1994, the claims are not corroborated and are insufficient to attribute marijuana to Applicant on this occasion.

While employed with the Federal Government in March 1994, Applicant was searched by base investigators for marijuana in his living quarters. During AF investigators' search of Applicant's quarters on March 31, 1994, investigators found a small plastic bag of material (containing marijuana and 3 burnt out portions of marijuana cigarettes) inside Applicant's black nylon jacket. Initially denying that the marijuana was his (claiming it belonged to an individual who was in his room the night his car was stolen), Applicant later admitted that the marijuana bag belonged to him. He claimed to interviewing AF investigators that the marijuana bag was placed in his suitcase by a female acquaintance of his, with whom he had spent several nights with. He was taken to base security for questioning by AF investigators and permitted to take a voluntary drug test. While away for questioning, he apparently failed to notify his command and was cited for AWOL for an 8-hour period on March 31, 1994. When told that his drug test results could not be located, Applicant informed his AF supervisor of his situation and began looking for an attorney.

On November 7, 1994, Applicant was presented with a proposed removal by his AF command, which cited his March 31, 1994 AWOL, his found possession of marijuana while on government premises and on TDY and his deliberate misrepresentation of a material fact in connection with matters under official investigation. Affording Applicant time to reply to the November 7 notice, and receiving no Applicant response, Applicant was notified on January 5, 1995 of his

command's decision to remove from him from his AF position in the interests of the AF. Thereafter, Applicant reached a compromise with his AF command that permitted his employment record to reflect "a resignation after being presented with a letter of removal." His AF resignation, in turn, was effectuated on January 6, 1995.

Investigation of Applicant's possible possession of marijuana in March 1994 continued, and Applicant was charged by federal authorities in June 1995 with possession of marijuana. He pleaded guilty to the charge on June 5, 1995, and was fined approximately \$100.00 plus costs, was required by the court to perform 100 hours of community service, and was awarded 2 years of probation.

Besides his June 1995 charge and conviction, Applicant was arrested on December 30, 1995 in State A for (1) public indecency, (2) importuning and (3) resisting arrest, and was found guilty of the first 2 counts. He was fined \$50.00 (suspended) plus costs and awarded 6 months of probation. Count 3 was dismissed.

Asked to execute a SF171 by his AF command, Applicant omitted his December 30 arrest from his completed form (executed on November 13, 1992). In a PSQ he executed on December 29, 1992, he omitted both his 1985 arrest and his use of marijuana within the previous 5 years. Applicant provides too little explanation for his claimed memory lapses to sustain him against drawn inferences of knowing and wilful concealment of pertinent adverse information.

When applying to Company A for employment (following his AF separation in January 1995), Applicant attached both a pre-employment letter and a resume to his cover letter under date of March 20, 1995. In describing the circumstances of his AF separation, he claims he was eliminated from his AF position due to budget constraints. His separation claims belie his dismissal for cause and under the circumstances reflect knowing and wilful omission. That he may have informed his company superiors of the then still active status of both his court case and AF separation does not neutralize either the character or pertinence of his separation misstatements. Applicant could have reasonably anticipated at the time that his executed pre-employment letter would be seen not only by company officials tasked to review clearance applications, but the Government as well. His misstatements, as such, retain their falsification significance for purposes germane to assessing Applicant's security worthiness.

Applicant omitted his history of marijuana use from his completed NAQ, which he executed on November 6, 1995. His omission reflects knowing and wilful concealment which cannot be reconciled with his explanation that he was focused on his 1995 possession arrest and was distracted.

CONCLUSION

Applicant comes to these proceedings with a history of marijuana use over a 10-year period spanning 1978 to 1988. While the evidence is insufficient to attribute his using marijuana with acquaintances he chanced to meet with on the evening of March 25, 1995, the evidence is solid that he was in possession of the bag of marijuana which was seized from his billeting quarters by AF investigators on March 31, 1995. His subsequent conviction for marijuana possession in June 1995 was apparently never appealed and is controlling in these proceedings. Considered together, Applicant's characterized regular involvement with marijuana over an extended period of time retains its security significance, even if Applicant cannot be linked to any marijuana activity between 1988 and arch 1995.

Without a credible record of Applicant initiated rehabilitation steps, or even persuasive assurances from Applicant that he will not involve himself with marijuana in the future, cause for crediting him with sufficient extenuation and/or mitigation to absolve still extant risks of his resuming his use of marijuana in the future is lacking. Applicant's evidentiary burden is not met with respect to the covered allegations of his involvement with illegal substances, and unfavorable conclusions warrant with respect to sub-paragraphs 1.a through 1.c of Criterion H (drug involvement).

Potentially more security significant are Applicant's spate of misstatements and omissions pertaining to his execution of various questionnaires given to his AF and industrial employers between November 1992 and November 6, 1995. So much reliance and trust are imposed on persons cleared to access classified information, that breaches are not easily reconciled with minimum standards of clearance eligibility. *See Snepp v. United States*, 444 U.S. 506, 511n.6 (1980). His falsifications accompanying his completed questionnaires cover his prior arrests and involvement with marijuana and are manifestly relevant to assessments of his clearance suitability. Applicant's explanations provide no sustaining basis for his showing isolated conduct, prompt, good faith revisions of his earlier misstatements and omissions, or

reliance on the advice of authorized personnel. Whatever corrective measures he has taken to avert falsification incidents in the future are neither convincing nor reassuring and are insufficient to enable him to surmount the adverse trust risks attributable to his trust breaches. Unfavorable conclusions are called for with respect to his repeated failures to provide accurate and correct answers pertaining to sub-paragraphs 2.a through 2.e.

Applicant's arrests/convictions and record of falsifications raise security concerns covered by Criterion J (criminal conduct) as well, which are neither extenuated nor mitigated sufficiently to enable Applicant to overcome raised risks supported by the presented record. Unfavorable conclusions are justified, accordingly, under sub-paragraphs 3.a and 3.b of Criterion J.

In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in F.3 of the Directive and the Directive's Change 3 Guidelines in the preamble.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the FINDINGS OF FACT, CONCLUSIONS and the FACTORS listed above, this Administrative Judge makes the following FORMAL FINDINGS:

CRITERION H: AGAINST APPLICANT

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

CRITERION E: AGAINST APPLICANT

Sub-para. 2.a: AGAINST APPLICANT

Sub-para. 2.b: AGAINST APPLICANT

Sub-para. 2.c: AGAINST APPLICANT

Sub-para. 2.d: AGAINST APPLICANT

Sub-para. 2.e: AGAINST APPLICANT

CRITERION J: AGAINST APPLICANT

Sub-para. 3.a: AGAINST APPLICANT

Sub-para. 3.b: AGAINST 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 Applicant's security clearance.

Roger C. Wesley

Administrative Judge