

April 11, 1997

In RE:

SSN:

Applicant for security clearance

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ISCR Case No. 96-0796

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

Appearances

FOR THE GOVERNMENT

Martin H. Mogul

Department Counsel

FOR THE APPLICANT

Pro se

STATEMENT OF CASE

On October 31, 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 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 the 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 about November 23, 1996.

Applicant elected to have this case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant aterial (FORM) on February 10, 1997. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received his copy

on February 14, 1997, and submitted nothing in reply. The case was received by the undersigned for resolution on April 9, 1997. The issue raised here is whether the Applicant's admitted drug usage 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, and the File of Relevant Material. The Applicant is 47 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant.

Criterion H - Drug involvement

1.a.~1.e. The Applicant "first smoked marijuana in about 1968" (Government Exhibit (GX) 5 at page 1). He describes his marijuana abuse in the following terms: "From 1968 to 1973 I smoked it mostly on weekends by sharing a marijuana cigarette with friends on the weekends. From 1973 to 1988 I only smoked marijuana about a couple times a year with friends" (GX 5 at pages 1~2).

In October of 1969, the Applicant was arrested, in part, for, and subsequently found guilty of, Possession of Marijuana (GX 5 at page 2). In November of 1971, he was again arrested for, and subsequently pled guilty to Possession of Marijuana.

Since 1988, the Applicant has continued to use marijuana. In his Answer he avers that "[b]ecause of being diagnosed with Glaucoma in 1991 I use a very small amount to help keep it stabilized . . ." (GX 3 at page 1). He admits in his sworn statement, however, he can not remember the diagnosing doctor's name, has no written documentation to support his averment, and is not undergoing any treatment or receiving any medication (GX 5 at page 2).

Mitigation

The Applicant offers little in the way of mitigation except for his bare averment that he is suffering from Glaucoma.

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

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 has used marijuana 28 or 29 years, as evidence by two convictions for its possession. [The Government, however, has failed to show that he ever purchased the drug.] In 1991, he claims to have been diagnosed with Glaucoma. This bare averment is not believable, without more. The Applicant offers no supporting documentation, admits that he is not receiving any treatment or medication, and states, "I never had marijuana prescribed to me by a medical doctor" (GX 5 at page 2). I must therefore conclude that the Applicant's continued use of marijuana is 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 Criterion 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. For 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