

Date: April 29, 1997

In Re:  
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SSN: -----

Applicant for Security Clearance

ISCR Case No. 96-0862

**DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT R. GALES**

**APPEARANCES**

**FOR THE GOVERNMENT FOR THE APPLICANT**

Teresa A. Kolb, Esquire

Attorney-Advisor to Department Counsel

*Pro se*

**STATEMENT OF CASE**

On December 9, 1996, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, "Safeguarding Classified Information Within Industry," dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, "Defense Industrial Personnel Security Clearance Review Program" (Directive), dated January 2, 1992, as amended and modified, 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 a clearance should be granted, continued, denied, or revoked.

A copy of the SOR is attached to this Decision and included herein by reference.

In a sworn written statement, dated January 2, 1997, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on a written record, in lieu of a hearing. Department Counsel submitted the Government's written case on February 6, 1997. A complete copy of the file of relevant material (FORM) <sup>(1)</sup> was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He chose no to do so. The case was initially assigned to Administrative Judge John R. Erck on April 3, 1997, but due to caseload considerations, was subsequently reassigned to, and received by, this Administrative Judge on April 28, 1997.

**FINDINGS OF FACT**

Applicant has admitted nearly all of the factual allegations pertaining to drug involvement under Criterion H (subparagraphs 1.a., 1.b., 1.d., and 1.e.). Those admissions are hereby incorporated herein as findings of fact. He has

denied subparagraph 1.c. of the SOR.

After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a thirty-four year old male employed by a defense contractor, and he is seeking to obtain a security clearance, the level of which has not been divulged.

Applicant has been a marijuana abuser for about fifteen years, commencing in September 1981, when he was eighteen years old, and continuing until at least June 1996.<sup>(2)</sup> He commenced using marijuana out of curiosity and peer pressure, and, because he enjoyed the effect of marijuana, continued to abuse it, at times, up to two times per month. It was estimated that he abused marijuana on approximately 25 occasions until about 1988. He ceased his marijuana abuse about the time he completed his Security Clearance Application, in June 1996, but before undergoing an interview with an agent of the Defense Investigative Service (DIS), in October 1996. During that interview, and in his sworn written statement, Applicant stated:<sup>(3)</sup>

I do not intend to smoke marijuana in the future, but consider it reasonably possible that I will take a few puffs of a joint if I am at a party and one is passed to me.

However, upon receipt of the SOR, Applicant underwent a *conversion*:<sup>(4)</sup>

. . . after realizing the effect marijuana use may have on [Applicant's] current employment status and future employment opportunities and since [Applicant has] no strong desire to use marijuana, [Applicant has] decided that [he] will not use marijuana at any time in the future.

Applicant also commenced using hashish during the early 1980s, to enhance his social interaction, and continued to abuse it on seven or eight occasions, until about 1990. He ceased his hashish abuse because he had lost interest in it, and has "no specific intentions to use hashish in the future."<sup>(5)</sup> There is no evidence to rebut Applicant's contentions that he has abstained from hashish since about 1990.

During the period of his substance abuse, Applicant purchased marijuana and hashish on an unspecified number of occasions during the 1980s, spending as much as ten dollars a month for his purchases. There is no evidence to rebut Applicant's contentions that he has not made any such purchases in the 1990s.

Applicant was never arrested during his period of illegal substance abuse.

He has never undergone any drug treatment or rehabilitation as a result of his substance abuse.

Applicant has been with his current employer since August 1985. The quality of his performance has not been revealed.

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Factors) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Factors).

An Administrative Judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision -- an expansion of the factors set forth in Section F.3. of the Directive, are intended to assist the Administrative Judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all

available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an Administrative Judge should consider are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

**[Drug Involvement - Criterion H]: 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.**

Drugs are defined as mood and behavior altering:

(a) drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens) and

(b) inhalants and other similar substances.

Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

**Conditions that could raise a security concern and may be disqualifying include:**

(1) any drug abuse (see above definition);

(2) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution;

**Conditions that could mitigate security concerns include:**

(3) a demonstrated intent not to abuse any drugs in the future.

Since the protection of the national security is the paramount determinant, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security,"<sup>(6)</sup> or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded that both standards are one and the same. In reaching this Decision, I have endeavored to draw only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have attempted to avoid drawing inferences that are grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the Government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the Government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the Government's case, and to ultimately demonstrate that it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

One additional comment is worthy of note. Applicant's loyalty and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than loyalty and patriotism. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied decision as to Applicant's loyalty or patriotism.

### CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of the witness credibility, and after application of all appropriate legal precepts and factors, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

With respect to Criterion H, the Government has established its case. Applicant's improper and illegal drug abuse, including the purchase, possession, and use of marijuana and hashish, is of concern, especially in light of his desire to have access to the nation's secrets.

Applicant did not simply experiment, while a teenager, out of curiosity, and stop. Instead, motivated by social pleasures, notwithstanding the legal status of his endeavor, he exhibited a pattern of questionable judgment, irresponsibility, and immature behavior, and continued his substance abuse of marijuana for approximately fifteen years, and abuse of hashish for approximately ten years. In fact, he was thirty-three years old when he finally stopped abusing marijuana. Applicant placed his drug-induced social pleasures above his potential fiduciary responsibilities towards the Government and the drug laws. As stated above, improper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. Applicant's actions have seemingly answered those questions.

The presence or absence of rehabilitation and other pertinent behavioral changes are significant factors in the overall adjudicative process. Despite a period of polysubstance abuse which lasted for ten years, and single substance abuse which lasted another five years, Applicant has not undergone any drug awareness, education, or treatment program, in order to achieve a better self-understanding of the behavioral and psychological effects of his actions and the motivation therefor. Likewise, simply superficially claiming that peer pressure and curiosity were initial motivators, and continued enjoyment and social pleasures were eventual motivators, does not demonstrate true insight into the actual motivation for following the fifteen year course of conduct which he had chosen. Furthermore, while Applicant's period of abstinence may have continued for nine months to the close of the record, it was only during the past six months that the abstinence was based upon a conscious decision to cease his substance abuse. Without answers to these important questions, as well as the development of counter measures to the resumption of substance abuse -- relapse prevention, the likelihood of recurrence becomes greater. It becomes even greater, still, when Applicant continues to associate with others of questionable behavior -- those friends who remain substance abusers. [\(7\)](#)

In this instance, especially in light of Applicant's changing commentary regarding future intentions, and the length of his period of substance abuse, I believe that both the successful completion of a drug treatment and rehabilitation program, as well as continued abstinence, for a period longer than the current nine months, should be required to demonstrate the truly successful transformation from substance abuser to an abstinent, drug-free person, and to provide the basis for a conclusion that such conduct will not continue or recur in the future. While his actual substance abuse may have ceased nine months ago, his declared motivation to abstain has only been so stated for the past six months. Under the evidence presented, I possess little confidence that Applicant's substance abuse is a thing of the past, or that it will not recur. This is not to infer that I do not believe Applicant's declared intention of continued abstinence, for he has exhibited a laudable candor. However, even with good intentions, more time is simply necessary.

I do not take this position lightly, but based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my evaluation of the evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under Enclosure 2 of the Directive, I believe that Applicant has failed to mitigate or overcome the Government's case. The evidence leaves me with grave questions and doubts as to Applicant's continued security eligibility and suitability. Accordingly, allegations 1.a. through 1.e. of the SOR are concluded against

Applicant.

For the reasons stated, I conclude Applicant is not suitable for access to classified information.

### **FORMAL FINDINGS**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1. Criterion H: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the 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.

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Robert R. Gales

Chief Administrative Judge

1. The Government submitted five items in support of its contentions.
2. *See*, Item 5, at 1. In addition, there is reason to believe that the marijuana abuse may have continued after June 1996, due to Applicant's subsequent comment that his last such use occurred after he had completed the questionnaire. In this regard, *see*, Item 3, at 1.
3. *See*, Item 5, at 1.
4. *See*, Item 3, at 3.
5. *See*, Item 5, at 1.
6. *See*, Executive Order 12968, "*Access to Classified Information*;" as implemented by Department of Defense Regulation 5200.2-R, "*Personnel Security Program*," dated January 1987, as amended by Change 3, dated November 8, 1995. However, the Directive uses both "clearly consistent with the national interest" ( *see*, Sec. B.3; Sec. C.2.; and Sec. D.2.; Enclosure 3, Sec. 1.; and Sec. 25), and "clearly consistent with the interests of national security" (*see*, Enclosure 2 (Change 3), Adjudicative Guidelines, at 2-2).
7. *See*, Item 5, at 2.