

Date: July 29, 1997

In RE:

SSN:

Applicant for security clearance

ISCR Case No. 97-0244

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

Appearances

FOR THE GOVERNMENT

Martin H. Mogul, Esquire

Department Counsel

FOR THE APPLICANT

*Pro se*

STATEMENT OF CASE

On March 28, 1997, 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 or about April 11, 1997.

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 Material (FORM) on May 8, 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 May 13, 1997, and submitted nothing in reply. The case was received by the undersigned for resolution on July 22. The issue raised here is 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, and the File of Relevant Material. The Applicant is 49 years of age, and is employed by a defense contractor as a Visual Communications Manager. He currently holds 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. The Applicant was granted a secret security clearance in August of 1981 (Government Exhibit (GX) 4 at page

8). In about September of 1993, however, the Applicant began to use marijuana (GX 5 at page 1). He continued this use for the next three years. He describes his usage as "six times between September, 1993 to September, 1996" (GX 5 at page 1).

On August 19, 1996, the Applicant inadvertently dropped a marijuana pipe from his pocket, while at his place of employment (GX 5 at page 1). As a result of this transgression, the Applicant was "counseled regarding both company policy and government security clearance requirements regarding drug use" (GX 6 at page 1). He was also suspended for one day without pay.

### Mitigation

In his February 1997 sworn statement, the Applicant avers he has "absolutely no intention of using marijuana again in the future" (GX 5 at page 1).

## 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:

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

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 marijuana abuse spans a period of about three years. It culminated with him being caught with a smoking device at the work place in August of 1996. Although the Applicant's drug abuse was sporadic during this three year period, his last usage was less than eight months ago (the date of the Government's FORM ends the time line used for adjudication purposes in this case). It now appears that the Applicant intends no future drug abuse, however, it is too soon to say that his fairly recent usage, as evidenced by his bringing his marijuana pipe to his place of employment, is not 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. Against the Applicant.
- c. 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