

Date :September 3, 1997

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In RE:

SSN:

Applicant for security clearance

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ISCR OSD Case No.97-0255

## **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 May 12, 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 June 16, 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 July 1, 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 July 8, 1997, and Applicant's Response was received on August 14, 1997. The case was received by the undersigned for resolution on August 15, 1997. The issues raised here are whether the Applicant's 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, the File of Relevant Material and Applicant's Response. The Applicant is 37 years of age, and is employed by a defense contractor as a Senior Software Engineer. He currently holds no security clearance, but his employer seeks one on behalf of the Applicant.

Criterion H - Drug involvement

1.a.~1.c. The Applicant used marijuana, "about 2 times per week" from 1987 through January of this year, 1997 (Government Exhibit (GX) 5 at page 1). The Applicant also purchased marijuana on numerous occasions. As to his future intentions regarding the use of this drug, in a sworn statement dated January 31, 1997, he averred, "In the future I probably will continue to use marijuana for relaxation purposes" (GX 5 at page 1). In his Response, however, the Applicant now submits that he intends no future use of marijuana (Response at page 3).

Mitigation

In his Response, the Applicant offers laudatory comments from his employer (Response at pages 6 and 7).

**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 InvolvementConditions 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, . . . purchase . . . .

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 nearly ten years. During this period of time he used the drug "about 2 times per week (GX 5 at page 1), and his last usage was less than seven months ago (the date of the Applicant's Response to 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 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