

DATE: October 22, 1997

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 97-0283

## **DECISION OF ADMINISTRATIVE JUDGE**

**PAUL J. MASON**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Pamela C. Benson, Department Counsel

#### **FOR APPLICANT**

*Pro se*

### **STATEMENT OF THE CASE**

On April 15, 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, amended by Change 3, February 13, 1996, 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 denied or revoked. The SOR is attached. Applicant filed his Answer to the SOR May 14, 1997.

The case was received by the undersigned on July 7, 1997. A notice of hearing was issued on July 8, 1997, and the case was heard on August 7, 1997. The Government submitted documentary evidence. Testimony was taken from Applicant. The transcript was received on August 18, 1997.

### **FINDINGS OF FACT**

The Following Findings of Fact are based on the documentation and testimony. The SOR alleges drug involvement (Criterion H). Applicant admitted all the allegations of the SOR but noted he last purchased marijuana in 1991 and not August 1996 as alleged in the SOR.

Applicant is 34 years old and employed as a vice president and technology officer for a defense contractor. He seeks a secret level clearance.

Applicant used marijuana from 1976 to at least October 1996.<sup>(1)</sup> Applicant's stated intention not to use marijuana in the future is undermined by his ambiguous testimony in explaining question 24a of the security form. (GE #1) His heaviest use of the drug was from 1977 to 1981, but his use dropped from 1986 to 1991 while he was in college. After his baby was born in 1991 he reduced his marijuana use. He purchased the drug from 1977 to at least October 1996.<sup>(2)</sup> Applicant used cocaine about 10 times between 1980 and 1981. He purchased and used LSD around twenty times between 1980

and 1981. Applicant used hashish between 10 and 15 times between 1977 and the early 1980s. He used opium about five times between 1977 and the early 1980s. Finally, he used Quaaludes, Valium, and amphetamines between 1980 and 1986.

Applicant maintains he is an honest person. He also believes he is trustworthy because he is routinely supplied confidential information about employees of various corporations.

### **POLICIES**

Enclosure 2 of the Directive sets forth policy factors which must be given binding consideration in making security clearance determinations. These factors must be considered in every case according to the pertinent criterion; however, the factors are in no way 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 case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the entire realm of human experience or that the factors apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Factors most pertinent to evaluation of the facts in this case are:

#### **Drug Involvement (Criterion H)**

##### **Factors Against Clearance:**

1. any drug use;
2. illegal drug possession,...purchase....

##### **Factors for Clearance:**

None.

#### **General Policy Factors (Whole Person Concept)**

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at page 2-1 of Enclosure 2 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 behavioral changes; (7) the motivation for the conduct; and, (8) the likelihood of continuation or recurrence.

#### **Burden of Proof**

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information in the future. The Administrative Judge 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 establish all the factual allegations under drug involvement (Criterion H) 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 the 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 repeat itself and Applicant presently qualifies for a security clearance.

### **CONCLUSIONS**

The Government has established a case of drug involvement under Criterion H. While Applicant's use of cocaine, opium, Quaaludes, Valium, amphetamines, his purchase and use of LSD and hashish, stopped approximately 11 years ago without subsequent evidence to infer or suggest recurrence, Applicant's continuing marijuana involvement after 1986, raises residual doubts about whether there will be a recurrence of drug use in the future. Applicant has used marijuana from 1976 to October 1996 at different frequencies. Although Applicant strenuously claims he quit marijuana drug use in August 1996, his language in response to GE #1 provides a more reasonable inference that he was using marijuana after August 1996 to at least until October 22, 1996, when he filled out GE #1.

Applicant's confusing testimony regarding the words he inserted in response to the drug use question on the security form (GE #1), casts a cloud over Applicant's credibility. Applicant's credibility is weakened even more by his 'no' answer to question 24c of the form asking whether he had ever purchased drugs. In addition, Applicant has offered no independent evidence in support of his claim he stopped using marijuana in August 1996.

The record reflects Applicant's drug use was recent because it occurred as recently as a year ago in October 1996. Although Applicant describes his use as isolated or infrequent as far back as 1991, his suspect credibility raises a strong suggestion he used the drug more between 1991 and 1996 than he is willing to admit.

Although Applicant has stated in GE #2, his Answer and at the hearing his intention not to use marijuana in the future, his stated intention cannot receive blind acceptance but must be weighed against several facts in the record. First, the words in Applicant's response to question 24a of the security form (GE #1) clearly provides a logical and reasonable conclusion that Applicant had been using marijuana at least until October 1996 when he submitted the form. Second, Applicant's testimony in response to question 24a is ambiguous and has no probative value in understanding why Applicant chose present-tense language in his response to question 24a, if he had actually stopped using marijuana two months before he filled out the security form.

Second, even though Applicant's incorrect response to question 24c (drug purchase question) is not alleged in the SOR, telling the Government he never purchased drugs when he actually did, undermines Applicant's credibility even further.

Considering Applicant's marijuana involvement from 1976 to October 1996, his suspect credibility, and the absence of independent evidence to corroborate his honesty, his trustworthiness, and his intentions to forego drug use in the future, Applicant has failed to meet his ultimate burden of persuasion under Criterion H.

### **FORMAL FINDINGS**

Having weighed the specific policy factors under Criterion H with the general policy factors under the whole person concept, Formal Findings required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1 (drug involvement-Criterion H): AGAINST THE APPLICANT.

- a. Against the Applicant (to October 1996).
- b. Against the Applicant (to October 1996).
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.
- f. For the Applicant.

g. For the Applicant.

h. For the Applicant.

i. For the Applicant.

j. For the Applicant.

k. For 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.

Paul J. Mason

Administrative Judge

1. In response to question 24a, the drug activity question on the security form (GE #1), Applicant indicated he used marijuana from October 1989 to the present, and that his use was often early but now only once or twice a year. Also, he testified he was in a hurry and misunderstood question 24a. Applicant's explanations for why he chose the word 'present' are not credible (TR. 22-23), especially when considered with the word 'now' he chose to describe the number of times he was using the drug. Applicant's overall credibility is undermined even more by his 'no' answer to question 24c (the drug purchase question). See, GE #1. Even though his failure to disclose his periodic drug purchases was not alleged in the SOR and are not considered on the merits of this case, the concealment raises some doubt about Applicant's overall credibility.

2. While Applicant maintains his last use was in 1991 (Answer), his confusing testimony relating to his response to question 24a, and his incorrect response to question 24c of the security form, persuades me to find he purchased marijuana until August 1996.