

Date: __September 5, 1997__

In re:

Applicant for Security Clearance

ISCR OSD Case No. 97-0351

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR THE GOVERNMENT

William S. Fields, Esq.

Department Counsel

FOR THE APPLICANT

Pro se

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on May 14, 1997. (Copy attached.) The SOR detailed reasons why the Government could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. [\(1\)](#) The SOR alleges Criterion J (pattern of criminal activity) in paragraph 1 and Criterion H (drug involvement) in paragraph 2.

Applicant responded to these SOR allegations on May 27, 1997, and requested a decision on the record. On June 13, 1997, Department Counsel prepared a File of Relevant Material (FORM) which Applicant received on June 26, 1997. He had 30 days after receipt of the FORM to object to any exhibits or to submit information on his own behalf. He did respond and submitted information on June 28, 1997 and July 2, 1997, (Exhibits A-G) to which Department Counsel did not object on July 7, 1997; and the record closed.

Subsequently, this matter was assigned to me on July 9, 1997, to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

FINDINGS OF FACT

In his Answer Applicant admitted individual factual allegations in the SOR: subparagraphs 1.a., 2.a. through 2.k.. I incorporate these admissions as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant is a 30-year old (DOB: 02/22/67) analytical photogrammetrist and has worked for a defense contractor in State #1 since March 1996 after he completed a Ph.D. in that field in State #2 in May 1996. He also has a masters degree in engineering from the same university awarded in December 1990, and a Bachelor of Science in Electrical Engineering awarded in May 1989. (Exhibit D) He has not previously had a security clearance.

Criminal Conduct

Applicant was arrested on two counts of drug possession on May 28, 1995, in a state park in State #3; and a Criminal Information was filed on May 30, 1995, for Count 1, Possession of a Controlled Substance (Class 4 Felony) for possession of Lysergic Acid Diethylamide and psilocybin, controlled substances, in violation of state statute and for Count 2, Possession of Cannabis (Class C misdemeanor) for possession of less than 2.5 grams of a substance containing cannabis, in violation of state statute. On August 23, 1995, Appellant plead guilty to Count I, Possession of a Controlled Substance, as alleged in Count I; and the court entered a Finding of Guilty to the charge⁽²⁾; he was fined \$500 and sentenced to twelve months probation without supervision under the Controlled Substances Act. Count II was dismissed. Upon fulfillment of his period of probation and the terms of the Order, the Court discharged him and dismissed the proceedings against him on October 29, 1996.

Drug Involvement

When he completed the Questionnaire for National Security Positions on January 2, 1997, he admitted his use of marijuana, LSD, psilocybin mushrooms, hashish and prescription drugs from January 1990 to May 1995, but he did not include the full extent of his drug use or his purchases. He claimed: "Drug use was never an impediment to my life and education and was not excessive." In his Statement of March 18, 1997, Applicant gave details of his drug use:

- marijuana from 1984 to May 1995 from once a month to three times a week; he spent \$40 per month on average;
- hashish from 1989 to early 1995 about two to three times per year; he spent approximately \$30 per year;
- psilocybin mushrooms from 1989 to May 1995 for an average of five to six times per year; he spent approximately \$20 per year;
- LSD from 1989 to May 1995 for an average of five to six times per year; he spent approximately \$30 per year;
- cocaine twice in the 1987-88 period only;
- prescription painkillers (prescribed for someone else) five times from mid-1980's to 1995.

From May 1995 (after his arrest where he was jailed for two days in the felony block) to the present, he has not used any of these drugs or any other illegal drugs. Appellant does not believe use of marijuana several times a week is abuse.

Awards and Reference

When he graduated from high school in June 1985 in State #2, he ranked sixth out of a class of 269 and had a 5.2 grade point average where six point was "A" (Exhibit B) and was a finalist in the National Merit Scholarship competition. (Exhibit C)

He received a 1993 fellowship award with a prize of \$1,000 for graduate studies in his field (Exhibit E) and another memorial scholarship award of \$1,000 in 1994. (Exhibit F)

His direct supervisor attests to his good character while in his employment and states that Applicant is extremely competent in his field. (Exhibit G)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive.

Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

Criterion J: Criminal Conduct

A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

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

- (1) any criminal conduct, regardless of whether the person was formally charged;
- (2) a single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns include:

- (2) the crime was an isolated incident;
- (4) the factors leading to the violation are not likely to recur;
- (5) there is clear evidence of successful rehabilitation.

Criterion H - Drug Involvement

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:

None

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance.

Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Criterion J - Criminal Conduct

The government established its case with regard to criminal conduct, Criterion J. Conditions that can raise a security concern and may be disqualifying include: (1) any criminal conduct, regardless of whether the person was formally charged; or (2) a single serious crime or multiple lesser offenses. Applicant plead guilty to Count I, Possession of a Controlled Substance, and the court entered a Finding of Guilty; he was fined \$500 and sentenced to 12 months probation without supervision. However, after fulfilling his period of probation, the Court discharged him and dismissed the proceedings against him on October 29, 1996. While Applicant interprets this action as erasing his conviction, it does not do so for security purposes as his criminal conduct raises legitimate security concerns. On the other hand while this criminal conduct was serious, I conclude that he now meets these Mitigation Factors (MF): (2) the crime was an isolated incident as he has no other criminal arrests or convictions; (4) the factors leading to the violation are not likely to recur as his two nights in jail impacted him such that he stopped all use and purchase of any drugs; and (5) there is clear evidence of successful rehabilitation as he has now successfully completed his Ph.D. and has worked successfully in his field of expertise. Consequently, after considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 1.a. under Paragraph 1.

Criterion H - Drug Involvement

The government established its case with regard to Criterion H - Drug Involvement. Conditions that could raise a security concern and may be disqualifying include: (1) any drug abuse and (2) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.

Applicant used marijuana for over ten years and at times used it three times per week until he was arrested for possession in May 1995. He also used hashish, psilocybin mushrooms and LSD consistently for six years until he was arrested for possession in May 1995. He experimented with cocaine twice in the 1987-89 period and also used someone else's prescription pain killers for ten years. He purchased all of these drugs. Applicant was first involved with drugs while he was an undergraduate student. He continued and expanded his drug use after he got his B.S. to include more dangerous drugs and thus did not demonstrate maturity and good judgment. Further, he continued his extensive use until the night he was arrested.

Evidently, Applicant still does not have any concerns or regret about his drug involvement as he has asserted that his use of marijuana several times a week is not abuse, and that his drug use was not an impediment to his life or education. This minimization of the serious of his drug involvement does not inspire confidence in his resolve to remain drug free in the future. Consequently, I conclude that but for his limited and dated cocaine use ten years ago (allegation 2.j.), he does not meet the mitigation factors.

While Applicant's drug involvement ended two years ago, I consider that period too recent given his ten year continuous involvement. It is also too soon to conclude with his history that he has demonstrated his intent not to abuse any drugs in the future. While his educational and professional achievements are impressive (as he did do well in graduate school and completed his Ph.D. while winning several awards), his professional accomplishments there and on his current job do not alone excuse his extensive and expansive drug use. Consequently, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I decide against Applicant under subparagraphs 2.a, 2.b., 2.c., 2.d., 2.e., 2. f., 2.g., 2. h, 2.I, and 2.k. but for him under 2.j. under Paragraph 2.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Criterion J: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Paragraph 2. Criterion H: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e.: Against Applicant

Subparagraph 2.f.: Against Applicant

Subparagraph 2.g.: Against Applicant

Subparagraph 2.h.: Against Applicant

Subparagraph 2.i.: Against Applicant

Subparagraph 2.j.: For Applicant

Subparagraph 2.k.: Against 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 the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), and as amended by Change 3 dated February 16, 1996.

2. While Appellant asserted to the DIS investigator on March 18, 1997, that he "was never convicted" and that this was his first offense, the court records document both a plea of guilty and a finding of guilty.