

DATE: January 30, 1998

In Re:

Applicant for Security Clearance

ISCR Case No. 97-0480

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Department Counsel

FOR APPLICANT

Michael W. Beasley, Esq.

STATEMENT OF THE CASE

On July 16, 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) (copy appended) 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 applicant responded to the SOR in writing on August 26, 1997. The case was received by the undersigned on November 18, 1997, and a Notice of Hearing was issued on December 2, 1997. A hearing was held on January 15, 1998.

FINDINGS OF FACT

Applicant is a forty-seven year old man. He has been employed by the same defense contractor for over twenty-five years. He was granted a DoD security clearance in 1980.

In the early 1970s, applicant used marijuana an average of once a week. He continued to use it from 1976 to November 1996, but on a less frequent basis, and never more than six times in any one year. Applicant purchased marijuana "perhaps" ten to twelve times from the 1970s to 1991.

Applicant used cocaine twice in the 1970s. [\(1\)](#)

He did not like it, and will not use it again. He used LSD six or seven times in the 1970s. He does not intend to use it again.

Applicant testified that when he last used marijuana in November 1996, he had a bad reaction to it, which left him with little desire to continue using it. He further testified that by the time he told DoD investigators in 1997 that he had no future intention of using marijuana, he had made the decision not to use it again. He further testified that he will not use it again.

Three of applicant's coworkers, two of whom have known him professionally and socially for about twenty-five years, appeared at the hearing and testified that applicant is a reliable and trustworthy individual who performs well at his job.

POLICIES

Enclosure 2 of the Directive sets forth the Adjudication Policy (divided into Disqualifying Factors and Mitigating Factors) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Disqualifying Factors and Mitigating Factors are applicable:

DRUG INVOLVEMENT

Disqualifying Factors:

1. Any drug abuse.
2. Illegal drug possession.

Mitigating Factors:

1. The drug involvement was not recent.
3. A demonstrated intent not to abuse any drugs in the future.

CONCLUSIONS

In DOHA cases, the Government has the initial burden of producing evidence that reasonably suggests an applicant cannot be relied upon to safeguard classified information. If the Government meets its burden, it has established a prima facie case. Once the Government establishes a prima facie case, the burden shifts to applicant to produce evidence in refutation, extenuation, mitigation or reformation sufficient to establish that, notwithstanding the Government's prima facie case, he or she can be relied upon to safeguard classified information. In view of the Directive's requirement that a security clearance be granted only upon a finding that to do so is clearly consistent with the national interest, the applicant has a heavy burden.

In this case, the Government established a prima facie case under Criterion H. The evidence establishes that applicant used (1) marijuana an average of once a week during the early 1970s, (2) marijuana a few times a year from 1976 to November 1996, and (3) cocaine twice and LSD six or seven times in the 1970s. Applicant's use of these illegal drugs reflects adversely on his judgment, reliability and trustworthiness, and reasonably suggests that he cannot be relied upon to safeguard classified information.

Applicant testified that he has not used marijuana since November 1996. He further testified that given the bad reaction he had to it on that occasion, and the commitment he made to DoD in 1997 that he will not use it again, he will not use marijuana or any other illegal drug in the future. Considering the evidence as a whole, including applicant's demeanor and conduct while testifying, I find this testimony to be credible and worthy of belief.

In view of (1) applicant's approximately fourteen months of abstinence, (2) his credible testimony that he will not use marijuana or any other illegal drug in the future, and (3) the very favorable testimony concerning applicant's reliability and trustworthiness, I conclude that applicant has reformed, and in all likelihood, will not use marijuana or any other illegal drug in the future. For this reason, Criterion H is found for applicant.

FORMAL FINDINGS

PARAGRAPH 1: FOR THE APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to

grant or continue a security clearance for applicant.

Joseph Testan

Administrative Judge

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Applicant used cocaine twice in the 1970s. [\(2\)](#)

He did not like it, and will not use it again. He used LSD six or seven times in the 1970s. He does not intend to use it

again.

Applicant testified that when he last used marijuana in November 1996, he had a bad reaction to it, which left him with little desire to continue using it. He further testified that by the time he told DoD investigators in 1997 that he had no future intention of using marijuana, he had made the decision not to use it again. He further testified that he will not use it again.

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1. The drug involvement was not recent.
3. A demonstrated intent not to abuse any drugs in the future.

CONCLUSIONS

In DOHA cases, the Government has the initial burden of producing evidence that reasonably suggests an applicant cannot be relied upon to safeguard classified information. If the Government meets its burden, it has established a prima facie case. Once the Government establishes a prima facie case, the burden shifts to applicant to produce evidence in refutation, extenuation, mitigation or reformation sufficient to establish that, notwithstanding the Government's prima facie case, he or she can be relied upon to safeguard classified information. In view of the Directive's requirement that a security clearance be granted only upon a finding that to do so is clearly consistent with the national interest, the applicant has a heavy burden.

In this case, the Government established a prima facie case under Criterion H. The evidence establishes that applicant used (1) marijuana an average of once a week during the early 1970s, (2) marijuana a few times a year from 1976 to November 1996, and (3) cocaine twice and LSD six or seven times in the 1970s. Applicant's use of these illegal drugs reflects adversely on his judgment, reliability and trustworthiness, and reasonably suggests that he cannot be relied upon to safeguard classified information.

Applicant testified that he has not used marijuana since November 1996. He further testified that given the bad reaction he had to it on that occasion, and the commitment he made to DoD in 1997 that he will not use it again, he will not use marijuana or any other illegal drug in the future. Considering the evidence as a whole, including applicant's demeanor and conduct while testifying, I find this testimony to be credible and worthy of belief.

In view of (1) applicant's approximately fourteen months of abstinence, (2) his credible testimony that he will not use marijuana or any other illegal drug in the future, and (3) the very favorable testimony concerning applicant's reliability and trustworthiness, I conclude that applicant has reformed, and in all likelihood, will not use marijuana or any other illegal drug in the future. For this reason, Criterion H is found for applicant.

FORMAL FINDINGS

PARAGRAPH 1: FOR THE APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for applicant.

Joseph Testan

Administrative Judge

1. After carefully considering all of the evidence, I conclude that, notwithstanding applicant's June 9, 1997 statement to the Defense Security Service (DSS), his cocaine use occurred prior to his receipt of the DoD clearance in 1980.
2. After carefully considering all of the evidence, I conclude that, notwithstanding applicant's June 9, 1997 statement to the Defense Security Service (DSS), his cocaine use occurred prior to his receipt of the DoD clearance in 1980.