

DATE: January 22, 1998

In Re:

SSN:

Applicant for Security Clearance

ISCR Case No. 97-0455

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On August 4, 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 the 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 August 29, 1997.

The case was received by the undersigned on November 3, 1997. A notice of hearing was issued on November 4, 1997, and the case was heard on December 16, 1997. The Government submitted documentary evidence. Testimony was also taken from the Applicant. The transcript was received on January 2, 1998. The issue raised here is whether the Applicant's drug involvement 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 documents and the live testimony. The Applicant is 39 years of age, has an Associate's Degree in Electronics, and is employed by a defense contractor as an Earth Station Operations and Maintenance Specialist. He currently has no security clearance, but his employer seeks a secret security clearance on behalf of the Applicant.

Criterion H - Drug Involvement

1.a.~1.i. The Applicant used **marijuana**, with varying frequency, from about 1974 until he last used the drug in late December of 1995 (Government Exhibit (GX) 1 at page 1, and Transcript (TR) at page 49 lines 13~18, and at page 91

lines 17~20). The Applicant joined the Service in 1982 (TR at page 34 lines 18~19). Prior to joining the Service, the Applicant had, at times, used marijuana on a daily basis (TR at page 41 lines 12~16). About 1974, he also sold the drug (TR at page 52 lines 21 to 25). In fact, in November of 1976, he was arrested, and subsequently pled guilty to Transportation, Sale, Import, or Giveaway of Marijuana (TR at page 50 lines 7~22). In 1981, the Applicant further cultivated the drug (TR at page 53 line 1 to page 54 line 15).

During his seven plus years of military service, November of 1982 to December of 1989 (GX 4 at 7), the Applicant only used marijuana on one occasion, while on leave (TR at page 41 line 17 to page 42 line 4). In October of 1989, the Applicant executed a sworn statement and averred that he would never use illegal drugs again (GX 1 at page 1). However, he next used marijuana in 1992, from June to October, on two occasions. Subsequent to that period the Applicant used it twice a month until about July of 1993 (TR at page 47 line 11 to page 48 line 21). During the period from July of 1993 to December of 1995, the Applicant continued to use the drug on at least a monthly basis (TR at page 48 line 22 to page 49 line 12, *see also* at page 93 lines 6~20). Again, he last used marijuana in December of 1995. During the period of his usage, the Applicant also purchased the drug on numerous occasions (TR at page 50 line 23 to page 51 line 9).

In September of 1994, and again in May of 1995, he was evaluated for his marijuana abuse (TR at page 32 line 18 to page 33 line 19, at page 54 line 25 to page 56 line 13, and Applicant's Exhibit (AppX) A), and also received counseling from March to August of 1995 (TR at page 56 line 14 to page 57 line 22).

1.j.~1.t. The Applicant used and purchased **other drugs**, on a very limited basis, during the time frame 1975~1981. He used PCP once in 1975 (TR at page 71 lines 2~8); LSD once in 1976 or 1977 (TR at page 67 line 24 to page 68 line 1); and cocaine, Quaaludes, and crystal amphetamine, once each, during the period 1979~1980 (TR at page 67 lines 2~21, and at page 70 lines 6~10 and 20~23). He also used amphetamine in the pill form, once in 1981 (TR at page 70 lines 10~19). The Quaaludes, and PCP that the Applicant used were purchased by him (TR at page 68 line 18 to page 69 line 2, and at page 71 lines 10~19).

1.u. and 1.v. The Applicant also purchased marijuana, crystal amphetamine, and Quaaludes for his former spouse in about 1982 (TR at page 71 line 20 to page 73 line 17, and at page 73 line 23 to page 74 line 5). He furthermore provided his prescription medication, Valium, to her, although she did not have a prescription for its use (TR at page 73 lines 19~22).

Mitigation

The Applicant divorced his drug abusing, former spouse in 1989 (TR at page 34 line 25 to page 35 line 11). He last used marijuana two years ago, intends no future abuse, and no longer associates with drug abusers [he has changed his state of residency to get away from his former drug abuse environment] (TR at page 91 line 15 to page 92 line 20). On November 21, 1997, the Applicant was assessed as not being chemically dependent (AppX C). He was further assessed on November 25, 1997, at another facility (AppX D). There, they opined that the Applicant not only had no predisposition or tendency for drug abuse, but also that he needed no further education or treatment (AppX D at page 2 and 3).

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, including cultivation . . . purchase, sale or distribution;

Conditions that could mitigate security concerns:

- (1) the drug involvement was not recent;
- (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 only drug that the Applicant has abused to any extent since 1981 is marijuana. Since that year, he used it on one occasion in the 1980's, twice from June to October in 1992; and from then, once to twice a month until December of 1995. Since December of 1995, about **two years ago**, he has abstained from the use of any illegal substance. He has also offered strong evidence in mitigation: (1) He has long ago divorced his drug abusing former spouse; (2) He has moved away from the situs of his past drug abuse; and (3) He has offered credible evidence in support of his abstinence and that he needs no further treatment (AppXs C and D). I am thus convinced that his past drug abuse is no longer of present

security significance.

Considering all the evidence, the Applicant has rebutted the Government's prima facie case regarding his drug involvement. The Applicant has thus met the mitigating conditions of Criterion H, and of Section F.3. of the Directive. Accordingly, he has 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: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- 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.
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- l. For the Applicant.
- m. For the Applicant.
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- o. For the Applicant.
- p. For the Applicant.
- q. For the Applicant.
- r. For the Applicant.
- s. For the Applicant.
- t. For the Applicant.
- u. For the Applicant.
- v. For 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 clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge