

DATE: December 23, 1997

In Re:

Applicant for Security Clearance

ISCR Case No. 97-0569

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On August 21, 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 September 8, 1997. The case was received by the undersigned on November 3, 1997, and a Notice of Hearing was issued on November 18, 1997. A hearing was held on December 5, 1997.

FINDINGS OF FACT

Applicant is a thirty-five year old woman. She graduated from college in December 1996, and has been employed by a defense contractor since May 1997.

From January 1990 through December 1996, applicant used marijuana on approximately thirty occasions and used Valium that had not been prescribed for her on six to ten occasions.

Applicant testified that she last used marijuana at a graduation party in December 1996. She further testified that pursuing her professional career is now her top priority, and "there is no room" for marijuana in her future. She testified credibly that she will not use it again. She further testified that she has not used Valium since at least 1996, and has no intention of using it in the future.

Letters from three people who know applicant well (a supervisor, a coworker and a friend) were admitted in evidence (Exhibits A, B and C). These letters establish that applicant is considered to be a reliable, trustworthy individual who performs well at her 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.
2. The drug involvement was an infrequent event.
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 from January 1990 through December 1996, applicant used marijuana on approximately thirty occasions, and used Valium that had not been prescribed for her on six to ten occasions. Applicant's illegal use of these drugs reflects adversely on her judgment, reliability and trustworthiness, and reasonably suggests that she cannot be relied upon to safeguard classified information.

Applicant testified that she has not used marijuana since December 1996 and has not used Valium without a prescription since at least 1996. She further testified that she does not intend to use marijuana or Valium without a prescription 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 one year of abstinence, (2) her credible testimony that she does not intend to use marijuana or Valium without a prescription in the future, and (3) the very favorable documentary evidence concerning her reliability and trustworthiness, I conclude that applicant has reformed, and in all likelihood, will not use marijuana or Valium without a prescription 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