

DATE: March 4, 1998

In Re:

SSN:

Applicant for Security Clearance

ISCR Case No. 97-0692

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Esquire, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On October 20, 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 November 7, 1997.

The case was received by the undersigned on January 5, 1998. A notice of hearing was issued on January 9, 1998, and the case was heard on February 4, 1998. The Government submitted documentary evidence, and called one witness to testify. Testimony was taken from the Applicant. The transcript was received on March 3, 1998. The issues raised here are 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 41 years of age, is pursuing an AA degree at a community college, and is employed by a defense contractor as a senior drafter. 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.e. The Applicant used marijuana, with varying frequency, at times daily, from about 1973 until his last usage in March of 1997 (Transcript (TR) at page 15 line 13 to page 21 line 6). From 1980 to 1992, while living in State A, the

Applicant used marijuana on almost a daily basis (TR at page 20 line 3~17). During this period, in 1986, he was arrested, in part, for possession of marijuana (TR at page 24 line 15 to page 26 line 12). In 1988 or 1989, he was arrested a second time for possession of the illegal substance (TR at page 23 line 4 to page 24 line 14). During this period of time he also purchased the drug, "[g]enerally every week, or week and a half" (TR at page 21 line 7 to page 22 line 5). Since moving to State B, in 1992, the Applicant frequency of usage has decreased to three or four times a year (TR at page 18 line 9 to page 19 line 13).

Subsequent to his 1986 arrest, the Applicant received counseling for his marijuana abuse, and he realized that he was dependent on the drug (TR at page 27 line 10 to page 28 line 4). In September of 1997, the Applicant executed a sworn statement in which he averred, "[i]n the future I would say my use of marijuana will only be a vacation type thing with old friends" (Government Exhibit (GX) 5 at page 2). At his hearing, he further averred that he "occasionally" has a craving for the drug (TR at page 40 lines 1~12).

1.f.~1.n. The Applicant also used other illegal substances from about 1973 until about 1985 (GX 5 at pages 2~3). This usage included hashish, psilocybin mushrooms, cocaine, crystal methamphetamine, and what was purported to him to be LSD (TR at page 32 line 7 to page 37 line 2). He also purchased these drugs on numerous occasions (GX 5 at page 3).

Mitigation

The Applicant avers that since moving to State B in 1992, except for vacation periods, he has tried to abstain from the use of marijuana (TR at page 19 lines 15~22).

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 . . . purchase.

Conditions that could mitigate security concerns:

none

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 Applicant used marijuana over a period covering three decades, and to the point of dependency, from 1973 until his last usage in March of 1997, only about a year ago. Furthermore, in his September 1997, sworn statement he averred that he might use it in the future, a statement he only recanted in his November 1997, Answer to the SOR by stating that he would try to resist the temptation. As I am not convinced that the Applicant will not use marijuana in the future, I must conclude that the Applicant's fairly recent drug abuse is of present security significance.

Considering all the evidence, the Applicant has not rebutted the Government's prima facie case regarding his drug involvement. The Applicant has thus not met the mitigating conditions of Criterion H, and of Section F.3. of the Directive. Accordingly, he has not 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: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.
- g. Against the Applicant.

h. Against the Applicant.

i. Against the Applicant.

j. Against the Applicant.

k. Against the Applicant.

l. Against the Applicant.

m. Against the Applicant.

n. Against 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 not clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge