

DATE: April 2, 1998

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0808

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

William S. Fields, Esq., Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On December 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 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 granted, continued, denied or revoked.

Applicant responded to the SOR on December 22, 1997 and elected to have her case assigned for hearing. The case was assigned to this Administrative Judge on February 2, 1998. Applicant was furnished copies of the Government's intended exhibits prior to hearing. A hearing was convened on March 3, 1998 for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny or revoke applicant's security clearance. At hearing, the Government's case consisted of two exhibits and no witnesses; Applicant relied on seven exhibits and four witnesses (including herself). A transcript of the proceedings was received on March 18, 1998.

STATEMENT OF FACTS

Applicant is 18 years of age and has been employed by her current defense contractor (Company A) since May 1997. She seeks a security clearance at the level of secret (R.T., at 35).

Summary of Allegations and Responses

Applicant is alleged to have (a) used marijuana, with varying frequency, at times daily, from approximately July 1993 to at least May 1996, (b) abused the prescription drug, Ritalin, which was not prescribed for her, from approximately December 1995 to at least February 1996, and (c) been arrested in May 1996 in State A and charged with violation of curfew, violation of not obeying a parent, violation of not going to school, and alcohol/illegal drug use, placed into a

detention center for about 30 days, and required to participate in a "Scared Straight" program, placed on indefinite supervised probation from an earlier offense, and upon violating her probation on June 28, 1996, was ordered to complete a Life Skills Group Counseling Program and undergo a substance abuse evaluation; she was released from probation on May 16, 1997.

For her response to the SOR, applicant admitted most of the allegations, denying only (i) her use of Ritalin for the period alleged, claiming one time use only, exact date unknown, and (ii) her violating her probation on June 28, 1996, claiming probation disposition was completed in court on June 28, 1996 for her earlier May 1996 probation violation.

Relevant and Material Findings

Applicant was introduced to marijuana in July 1993 (around the time she turned 15) by friends. Marijuana made her laugh, speeded her heart beat, and at times made her feel paranoid. She used the substance monthly for about a year before increasing her use frequency to three times weekly for a six-month stretch between July 1994 and December 1994, and every other day from January 1995 to ay 1996. The marijuana was always provided to her by her boyfriend or other friends; so she never found it necessary to purchase any of the substance.

Besides marijuana, applicant once tried the prescription drug Ritalin on the suggestion of friends, a drug prescribed for persons with deficit disorders, and which was not prescribed to her (R.T., at 27). She tried Ritalin on just the one occasion, sometime between December 1995 and February 1996, the exact date of which she cannot recollect. She realizes she made a mistake in trying Ritalin, because she doesn't have a deficit disorder and it was not prescribed for her (R.T., at 27-28). She has no intention of ever trying it again (R.T., at 28). Both her recollections and assurances appear to be sincere and credible and are accepted.

Driving her aunt's car without permission in December 1995 to reach her boyfriend's house, she ran the car off the road and was retrieved by her aunt who escorted her to the local juvenile intake office, where she was charged with unlawful use of a vehicle. At the court's convened hearing in February 1996, the court suspended both her learner's permit and driver's license for six months and placed her on supervised probation.

Living with her aunt (with whom she did not get along), applicant violated her probation and ran away from home for about five days (staying with friends) in May 1996. Her aunt turned her in to juvenile authorities, and upon her return, she was arrested and charged by State A juvenile authorities with violation of curfew, not obeying a parent, not going to school and alcohol/illegal drug use, all misdemeanor offenses. Apparently, the alcohol/illegal drug use charge resulted from her aunt's showing authorities a picture of applicant holding a bottle of vodka and an old letter the aunt found which contained passages of a friend's encouraging applicant to give up marijuana smoking. At applicant's June 28, 1996 court appearance on the same charges, she was placed in a detention center for about a month, ordered to participate in a local program called "Scared Straight," and placed on indefinite supervised probation in connection with her earlier December 1995 offense.

Applicant's participation in her prescribed "Scared Straight" program consisted of a group session with other inmates (designed to infuse fear about criminal behavior and its punitive consequences). Following the completion of her detention, she was required to participate in group counseling, which consisted of weekly sessions, clinical evaluations (which involved her father) with a licensed social worker and school counseling with a Dr.X. Applicant participated in these sessions for about 12 weeks in all and managed to steer clear of marijuana for the duration of her counseling sessions. Credited with successfully completing her required counseling sessions and being clean of illegal substances in a conducted substance abuse evaluation, applicant was released from probation on May 16, 1997 (*see ex. D*).

Since her last use of marijuana in May 1996 (a period of almost two years), applicant has never used marijuana or any other illegal substance and has no intention of ever using illegal substances in the future (R.T., at 25). She has dedicated herself to improving her grades in school (which she has) and preparing her self for college (*see exs. A and G*). In just three short years, she has managed to transform herself from an angry, rebellious adolescent into an honor roll student, suffused with pride in her own accomplishments and deeply grateful to her friends and supporters who stood by her (*see ex. G*). Applicant receives excellent evaluations from her employer for her valued judgment, reliability and trustworthiness (*ex. F; R.T., at 33*) and impresses her employer with unusual understanding and maturity for a high school senior of 18 years of age. She is considered a model employee by her company manager (himself a Service

Academy graduate and retired AF colonel) who performs her duties in a very careful and responsible manner (*see* exs. C and F; R.T., at 33). Taking into account her demonstrated sincerity, candor and self-improvement dedication (academically and professionally), applicant is entitled to be believed in her claims and assurances that she will not return to illegal substances of any kind in the foreseeable future.

POLICIES

The Adjudicative Guidelines outlined in the Change 3 amendments to the Directive list policy considerations to be made by judges in the decision making process. These considerations include Disqualifying Conditions and Mitigating Conditions, which should be assessed before deciding whether or not a security clearance should be granted, continued or denied. The Directive does not require the assessment of these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in the Directive, which are intended to assist judges in reaching a fair and impartial common sense decision for recommendation.

Viewing the issues raised and evidence as a whole, the following Adjudicative Guidelines are pertinent herein:

Drug Involvement (Criterion H)

Disqualifying Conditions:

1. Any drug abuse.
2. Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.

Mitigating Conditions:

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

Burdens of Proof

By dint of the precepts framed by the Directive, a decision to grant or continue an applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's suitability for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Put another way, the judge cannot draw inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controversial fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a nexus to the applicant's inability to obtain or maintain a security clearance. The required showing of nexus, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of accessible risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSION

Applicant presents with a three-year history of illegal substance abuse, which involved marijuana, save for one isolated

use of the prescription drug Ritalin in the December 1995-February 1996 time frame, without a prescription. Attributing her teenage use of marijuana to experimentation and curiosity, she came to use it on a regular basis between July 1993 and May 1996 (her last use of the substance). Disqualifying conditions covered by the Adjudicative Guidelines (for drug use) are applicable and entail DC 1 (any drug use) and DC 2 (illegal drug possession). Applicant's marijuana involvement is security significant under the governing Adjudicative Guidelines and applicable tenets and enough to enable Government to satisfy its initial burden.

But to applicant's credit, she took advantage of good counseling and has completely changed her life around for the better. She now shows great interest in school and preparing herself for academic and professional advancement. She credits the support she has received from her counselors, teachers, friends and colleagues at work for the dramatic improvements she has made in her esteem, discipline and motivation. Keenly aware of her rebellious past, she is now a highly responsible and motivated young adult, who is as devoted to helping others in their personal development, as she is her own: Qualities that are customarily associated with good citizenship. With her maturity gains, she has been able to forge some rather remarkable attitudinal changes and lifestyle reorientations, which include a life-time commitment to remaining drug-free. Applicant's efforts are corroborated by the turnabouts she has demonstrated in school and her job and the positive impressions she has made on her supervisors, counselors, teachers and friends (including her boyfriend). In more poignant human terms, she picked herself up off the quarterdeck and got back into the game of life. Hers is an inspirational story that should provide a fountainhead of motivation for those who might stumble along life's tortuous journey. With almost two years of seasoned abstinence to show for her efforts, she manifests no likelihood of slipping back into abusive drug use of any kind and is a safe risk to remain drug free.

Applicant may claim the mitigation benefits of MC 1 (non recency) and MC 3 (demonstrated intent not to abuse illegal drugs in the future) of the Adjudication Guidelines (for drugs) and absorption of any risks of recurrent drug use. Overall, she carries her own evidentiary burden. Conclusions warrant, accordingly, that the allegations covered by sub-paragraphs 1.a through 1.c of the SOR are resolved favorable to applicant.

In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in the preamble of the Change 3 amendments to the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the FINDINGS OF FACT, CONCLUSIONS and the FACTORS listed above, this Administrative Judge makes the following FORMAL FINDINGS:

CRITERION H : FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c: FOR 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 applicant's security clearance.

Roger C. Wesley

Administrative Judge