

DATE: April 20, 1998

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0800

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

William S. Fields, Esquire, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On 5 December 1997, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 18 December 1997, Applicant answered the SOR and requested an administrative decision on the record. The Applicant did not respond to the Government's File of Relevant Material (FORM)--issued 27 January 1998; the record in this case closed 6 March 1998, the day the response was due at DOHA. The case was assigned to me on 9 April 1998. I received the case on the same day to determine whether clearance should be granted, continued, denied or revoked.

FINDINGS OF FACT

Applicant admitted using marijuana over the stated period, but denied ever purchasing marijuana; accordingly, I incorporate the admissions as findings of fact.

Applicant--a 40-year old employee of a defense contractor--seeks access to classified information.

In May 1997, Applicant went to work for his employer, knowing he would ultimately require a clearance to perform his duties. On 23 June 1997, Applicant executed a Questionnaire for National Security Positions (SF 86)(Item 4) to begin his background investigation. He truthfully disclosed that he had been fired from a job in the last seven years, and--within the same seven years--had used marijuana approximately ten times. On 8 October 1997, Applicant described his marijuana abuse history (Item 5):

I first used marijuana while in the Navy, approx[imately] 1977. I really can't estimate the amount of times used. In the last 10 years I have smoked marijuana once or twice a year, if it was offered to me socially at a celebration or holiday. On these occasions I would have 2-3 hits simply because it felt good, it makes me feel giddy, and in a good mood. I have never been dependent on marijuana and have not tried any illegal drugs. I have never had any mental or

psychological treatment or arrests or incidents related to the use of illegal drugs. I never used marijuana before or during work hours. The very last time I smoked marijuana was March 1997 when my brother brought it from California. In the last 10 years I have not purchased, ⁽²⁾ produced, trafficked, or sold any illegal substances and I do not intend to use marijuana or any illegal substance in the future. The reason I will not use them again is because of the risks of losing my job and I could not face my family and friends if I lost my job due to a couple of hits of marijuana. I am 40 years old, it's time to stop. Also for my health. I requested assistance for writing this statement from [Special Agent].

Applicant's answer expanded on his decision to stop using marijuana:

Prior to starting work at [my company] in May 1997, I decided to permanently stop using marijuana. I have children at home that I don't want to be exposed. I also knew that I had to stop in order to obtain a security clearance (my brother-in-law told me--He holds a similar security clearance). I was proud to find out the my job required me to have a security clearance. It made me feel privileged.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

DRUG INVOLVEMENT (CRITERION H)

Improper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

Conditions that could raise a security concern and may be disqualifying include:

- (1) any drug abuse;

Conditions that could mitigate security concerns include:

- (1) the drug involvement was not recent;
- (2) the drug involvement was an isolated or infrequent event;
- (3) a demonstrated intent not to abuse any drugs in the future;

Burden of Proof

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988),

"the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

The Government has established its case under criterion H. Applicant's approximately twenty year history of drug abuse--in apparent disregard of the illegality of that drug abuse--raises doubts about his continued fitness for access to classified information. However, I find the drug abuse mitigated. His abuse over the last ten years was both infrequent and isolated. He last used marijuana in March 1997, a year ago, and states an intent to use no drugs in the future. I find Applicant's stated intent credible in part because he disclosed this--and other--adverse information on his clearance application and in part because of the circumstances of his decision to stop using marijuana. Further, there is no evidence in the record to support a conclusion that Applicant has any physical or psychological dependence on marijuana. I accept his claim that he will not use drugs in the future.

I find criterion H. for Applicant.

FORMAL FINDINGS

Paragraph 1. Criterion H: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: 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.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996 (Directive).
2. The sole basis for the Government's allegation that Applicant has purchased marijuana seems to be the inference from this statement that sometime more than ten years ago Applicant bought marijuana. In the face of Applicant's denial of the allegation, I find the inference insufficient to establish the allegation. In any event, I would consider a purchase of marijuana more than ten years ago to have no security significance.