

DATE: February 27, 1998

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 98-0003

**DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT R. GALES**

**APPEARANCES**

**FOR GOVERNMENT**

Michael H. Leonard, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**STATEMENT OF THE CASE**

On January 5, 1998, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, "Safeguarding Classified Information Within Industry," dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, "Defense Industrial Personnel Security Clearance Review Program" (Directive), dated January 2, 1992, as amended and modified, 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 a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated January 13, 1998, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on a written record, in lieu of a hearing. Department Counsel submitted the Government's written case on February 6, 1998. A complete copy of the file of relevant material (FORM)(1) was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He submitted a response, dated February 16, 1998, to which Department Counsel offered no objection. The case was initially assigned to Administrative Judge Roger C. Wesley on February 26, 1998, but due to caseload considerations, was subsequently reassigned to, and received by, this Administrative Judge that same day.

**FINDINGS OF FACT**

Applicant has admitted nearly all of the factual allegations pertaining to drug involvement under Criterion H. Those admissions are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a twenty-one year old male employed by a defense contractor, and he is seeking to obtain a SECRET

security clearance.

Applicant was an illegal substance abuser. He commenced using marijuana in about December 1994, shortly after his enrollment into college, and continued doing so, on a regular basis, until at least August 1997.<sup>(2)</sup> He smoked it primarily at home, friends' homes, and at house parties and other social gatherings with friends, and estimated that he had used marijuana on about 500 occasions.<sup>(3)</sup> His initial experimentation with the substance was attributed to "curiosity," but subsequent use continued thereafter because marijuana facilitated a mellow and relaxed feeling for Applicant.<sup>(4)</sup>

He ceased using marijuana about one month prior to accepting his current position, and did so because of what he characterized as ". . . a genuine lack of interest in the substance and the fact that committing such acts gravely affect [Applicant's] future. . . ."<sup>(5)</sup> He has vowed to never use marijuana in the future.<sup>(6)</sup> There is nothing in the record to rebut Applicant's contention that he has abstained from marijuana abuse since August 1997.

During his period of substance abuse, on an estimated five to ten occasions, Applicant purchased varying quantities of marijuana, for his own use, but never tried to cultivate it or sell it.<sup>(7)</sup>

Applicant's substance abuse resulted in his being charged, in September 1994, as a "minor in possession," for which he was fined by the court.<sup>(8)</sup> He has had no other illegal substance-related involvement with law enforcement authorities.

He has never had any medical intervention associated with his substance abuse, nor has he undergone any drug treatment or rehabilitation.<sup>(9)</sup>

Applicant has been employed by his current employer since September 1997. The quality of his performance has not been characterized.

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Factors) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Factors).

An Administrative Judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision--an expansion of the factors set forth in Section F.3. of the Directive, are intended to assist the Administrative Judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an Administrative Judge should consider are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of 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.**

Drugs are defined as mood and behavior altering:

- (a) drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens) and
- (b) inhalants and other similar substances.

Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

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

- (1) any drug abuse (see above definition);
- (2) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution;

**Conditions that could mitigate security concerns include:**

- (3) a demonstrated intent not to abuse any drugs in the future.

Since the protection of the national security is the paramount determinant, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security,"<sup>(10)</sup> or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded that both standards are one and the same. In reaching this Decision, I have endeavored to draw only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have attempted to avoid drawing inferences that are grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the Government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the Government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the Government's case, and to ultimately demonstrate that it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

One additional comment is worthy of note. Applicant's loyalty and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than loyalty and patriotism. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied decision as to Applicant's loyalty or patriotism.

**CONCLUSIONS**

Upon consideration of all the facts in evidence, an assessment of the witness credibility, and after application of all appropriate legal precepts and factors, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

With respect to Criterion H, the Government has established its case. Applicant's improper and illegal drug abuse,

including the purchase, possession, and use of marijuana, is of concern, especially in light of his desire to have access to the nation's secrets. Applicant did not simply experiment out of curiosity and stop. Instead, motivated by social pleasures, notwithstanding the legal status of his endeavor, he exhibited a pattern of questionable judgment, irresponsibility, and immature behavior, and continued his substance abuse of marijuana during a nearly three year period, on approximately 500 occasions. It is of substantial concern that Applicant had the opportunity to turn his back on continued illegal substance abuse shortly after his experimentation with marijuana had commenced, when he was charged by legal authorities as a "minor in possession." Unfortunately, he failed to seize that opportunity. Applicant learned nothing from that experience, disregarded that incident, and resumed his illegal practices. His substance abuse finally ceased about six months before the closing of the record in this case.

The presence or absence of rehabilitation and other pertinent behavioral changes are significant factors in the overall adjudicative process. Despite a lengthy period of marijuana abuse, Applicant has not undergone any drug awareness, education, or treatment program, in order to achieve a better self-understanding of the behavioral and psychological effects of his actions and the motivation therefor. Likewise, simply superficially claiming that continued enjoyment and social pleasures were motivators, does not demonstrate true insight into the actual motivation for following the course of conduct which he had chosen. Furthermore, Applicant has seemingly minimized the significance of his substance abuse by rationalizing it away as "nothing more than college experimentation."<sup>(11)</sup> Without the development of countermeasures to the resumption of substance abuse--relapse prevention, the likelihood of recurrence becomes greater.

In this instance, while crediting Applicant with the wisdom of finally ceasing his substance abuse and remaining abstinent since August 1997, I believe that both the successful completion of a drug treatment and rehabilitation program, as well as confirmed abstinence for a reasonable period should be required to demonstrate the truly successful transformation from substance abuser to an abstinent, drug-free person, and to provide the basis for a conclusion that such conduct will not continue or recur in the future. Under the evidence presented, I possess little confidence that Applicant's substance abuse is a thing of the past, or that it will not recur.

I do not take this position lightly, but based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my evaluation of the evidence, and my application of the pertinent factors under the Adjudicative Process, I believe that Applicant has failed to mitigate or overcome the Government's case. The evidence leaves me with questions and doubts as to Applicant's continued security eligibility and suitability. Accordingly, allegations 1.a. and 1.b. of the SOR are concluded against Applicant.

For the reasons stated, I conclude Applicant is not suitable for access to classified information.

### **FORMAL FINDINGS**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1. Criterion H: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

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Robert R. Gales

Chief Administrative Judge

1. The Government submitted five items in support of its contentions.
2. *See* Item 3 (Response to SOR, dated January 13, 1998) at 1-2; Item 4 (Questionnaire For National Security Positions, dated September 29, 1997) at 8; Item 5 (Statement of Subject, dated November 20, 1997), at 1; and Response to the FORM, dated February 16, 1998, at 1.
3. *See* Item 5, *ibid*.
4. *Ibid*.
5. *See* Item 3 , *supra* note 2 at 2.
6. *Ibid*. *See also* Item 5, *supra* note 2 at 2; and Response to the FORM, *supra* note 2 at 1.
7. *See* Item 3, *supra* note 2 at 2.
8. *See* Item 4, *supra* note 2 at 7; and Item 5, *supra* note 2 at 2.
9. *Id*. Item 5 at 1.
10. *See*, Executive Order 12968, "*Access to Classified Information;*" as implemented by Department of Defense Regulation 5200.2-R, "*Personnel Security Program,*" dated January 1987, as amended by Change 3, dated November 8, 1995. However, the Directive uses both "clearly consistent with the national interest" (*see*, Sec. B.3; Sec. C.2.; and Sec. D.2.; Enclosure 3, Sec. 1.; and Sec. 25), and "clearly consistent with the interests of national security" (*see*, Enclosure 2 (Change 3), Adjudicative Guidelines, at 2-2).
11. *See* Response to the FORM, *supra* note 2 at 2.