

DATE: May 15, 1998

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----- ) ISCR Case No. 98-0088

SSN: ----- )

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Applicant for Security Clearance )

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**DECISION OF ADMINISTRATIVE JUDGE**

**ROGER C. WESLEY**

**Appearances**

FOR GOVERNMENT FOR APPLICANT

William S. Fields, Esq. *Pro Se*

Department Counsel

**STATEMENT OF THE CASE**

On January 26, 1998, 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 February 4, 1998 and elected to have his case assigned for hearing. The case was assigned to this Administrative Judge on February 23, 1998. Applicant was furnished copies of the Government's intended exhibits prior to hearing. A hearing was convened on March 26, 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 no exhibits and two witnesses (including himself). A transcript of the proceedings was received on April 8, 1998.

**STATEMENT OF FACTS**

Applicant is 28 years of age and has been employed by his current defense contractor (Company A) since July 1994. He seeks a security clearance.

**Summary of Allegations and Responses**

Applicant is alleged to have (a) used marijuana, with varying frequency, at times daily, from approximately 1987 to at least March 1996, (b) purchased marijuana from approximately 1987 to at least arch 1996, (c) been arrested on February 13, 1994 in State A and charged with Misdemeanor Affray and Possession of Drug Paraphernalia, pleaded guilty and was sentenced to 60 days in jail (suspended upon payment of a \$75.00 fine and \$60.00 court costs), ordered to not

assault, harass or communicate with the complainant for one year and not possess drug paraphernalia for one year, (d) used marijuana laced with cocaine, with varying frequency, from approximately May 1995 to at least March 1996, (e) used cocaine, with varying frequency, at times two to three times weekly, from approximately May 1995 to at least March 1996, (f) purchased cocaine from approximately May 1995 to at least March 1996 and (g) used crack cocaine, with varying frequency, from approximately ay 1995 to at least March 1996.

For his response to the SOR, Applicant admitted each of the covered allegations. Affirmatively, he claims to have turned his life around and given his life to Christ. He asks for a second chance, acknowledging that he made some bad choices while holding a clearance between 1991 and 1994.

### **Relevant and Material Factual Findings**

The allegations in the SOR that were admitted by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant was introduced to marijuana in 1987 at the age of 17, first experimenting with it and then using it on an occasional basis once or twice a week. He continued this occasional use of marijuana for a few years before escalating his use. By 1995, he was smoking marijuana on a daily basis; he continued to smoke marijuana daily until he quit altogether in March 1996. Applicant satisfied his personal marijuana needs with periodic purchases of the substance. At the height of his use in 1995, he spent \$30.00 to \$40.00 at a time for his purchases of the substance.

Complying with the conditions set by the State A court following his 1994 conviction for possession of drug paraphernalia, Applicant entered a State A outpatient substance abuse program with H Center in 1995. He was credited with completing the 10-week program in 1995, but only after his concealing his ongoing use of illegal substances to the program's administrators (R.T., at 24).

Experiencing a string of alcohol-related incidents, Applicant suffered the loss of his driver's license in 1995. To regain his driving privileges, he was required by the State A court to attend a substance abuse counseling program (R.T., at 26). Applicant procrastinated in registering for counseling and until recently was not able to obtain the restoration of his license. Interested in regaining his driving privileges and learning more about the dangers of illegal substances, he just recently, he entered H Center's outpatient program. He has attended the Center's counseling sessions twice a week for some five weeks now (R.T., at 26-27) and credits the program with helping him to retrieve his driver's license and avert illegal substances (R.T., at 26-27).

Besides marijuana, Applicant tried cocaine. After first trying it in May 1995, he quickly increased his usage to two to three times weekly. He estimates to have used cocaine two to three times weekly (about twice a day on the days he uses it) between May 1995 and March 1996, oft-lacing it with marijuana, before quitting all use of the substance. Contemporaneous with his use of cocaine, he also tried crack cocaine; he estimates to have smoked crack cocaine between May 1995 and March 1996, sharing in the purchase of the substance with friends for their personal use.

Applicant assures he has turned his life over to Christ and renounced drugs. With a wife and children now to take care of, he no longer has any desire or intention to use illegal substances. Admitting his mistakes, he will willingly submit to random urine tests to demonstrate the earnestness of his drug-free commitment (R.T., at 27).

### **POLICIES**

#### **Drug Involvement**

#### **Disqualifying Conditions**

1. Any drug abuse.
2. Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.
4. Failure to successfully complete a drug treatment program prescribed by a credentialed medical professional.

## Mitigating Conditions

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.

## CONCLUSIONS

Applicant comes to these proceedings with a history of involvement with illegal substances: Marijuana, cocaine and crack cocaine. Accustomed to using marijuana occasionally for the first eight years of his involvement with the substance, he dramatically escalated his use of marijuana and other illegal substances in 1994. Beginning with an arrest and conviction for possession of drug paraphernalia in 1994, he not only increased his marijuana intake to daily use in May 1995 (maintaining daily use to March 1996), but he added cocaine and even crack cocaine to his drugs of preference. Applicant maintained his regular use of marijuana and cocaine/crack cocaine for a ten-month stretch (*i.e.*, between May 1995 and March 1996) before committing to a drug-free lifestyle, which he has been able to sustain to hearing at least. Applicant's involvement with illegal substances is security significant and entitled to considerable weight in assessing his overall clearance eligibility. Bearing security significance, too, are Applicant's purchases of marijuana and cocaine. Government meets its initial burden.

Appellant appears credible and is worthy of belief in his claims that his resort to illegal substances was a serious mistake. And he appears to be sincere in his assurances that he has turned irrevocably away from drugs now that he has "found Christ" and strengthened his family responsibilities. But he is able to draw very little rehabilitative support from the ten weeks he spent in therapy with H Center in 1995 (having continued to use marijuana while in outpatient treatment and withholding acknowledgment of his use from the Center's staff), or his more recent five weeks with the same center. But with barely two years away from illegal substances abuse, and a record of limited involvement with support groups, he is still well short of satisfying any of the mitigation requirements of the Adjudication Policy for imputed frequent abusers of illegal drugs.

Both the duration of Applicant's involvement in illegal substances, his failed past rehabilitation efforts and his corresponding declination to seek treatment or commit to NA or other recognized voluntary network, and the short time he is able to document to being drug-free (only two years) make difficult safe predictions that he is currently fully absolved of recurrence risks at this point in his recovery journey. For making this kind of assessment, more time is required. His decision to seek outpatient assistance (even if only briefly), turn away from drugs and seek a stable family relationship for himself and his children speaks positively for him and is worthy of commendation. But his efforts require additional seasoning before he can be credited with doubt-free recovery. Applicant's presented evidence in his

behalf is insufficient to avert overall unfavorable conclusions with respect to Criterion H.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors enumerated in F.3 and Enclosure 2 of 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 (DRUG INVOLVEMENT): AGAINST APPLICANT**

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

Sub-para. 1.d: AGAINST APPLICANT

Sub-para. 1.e: AGAINST APPLICANT

Sub-para. 1.f: AGAINST APPLICANT

Sub-para. 1.g: AGAINST APPLICANT

### **RECOMMENDED 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 Applicant's security clearance.

Roger C. Wesley

Administrative Judge