



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 07-10804  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Candace Le'i, Esquire, Department Counsel  
For Applicant: *Pro Se*

February 4, 2008

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**Decision**

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LOKEY-ANDERSON, Darlene, Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), dated January 5, 2007. On October 9, 2007, 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 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 the Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

The Applicant responded to the SOR in writing on October 30, 2007, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on December 6, 2007. A notice of hearing was issued on December 17, 2007, scheduling the hearing for January 15, 2008. At the hearing the Government presented four exhibits. The Applicant presented no exhibits, nor called any witnesses. He did testify on his own behalf. The record remained open after the hearing to allow

the Applicant the opportunity to submit additional documentation. He submitted one Post-Hearing Exhibit consisting of five pages. The official transcript (Tr.) was received on January 23, 2008.

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of an excerpt on Marijuana from the U.S. Drug Enforcement Administration dated November 27, 2007, and a publication on Marijuana from the U.S. Department of Health and Human Services, National Institute of Health, National Institute on Drug Abuse dated July 2005. The request and the attached documents were not admitted into evidence but were included in the record as Government Exhibits 3 and 4. The facts administratively noticed are set out in the Findings of Fact, below.

### **FINDINGS OF FACT**

The Applicant is 38 years old and married. He has a Bachelors Degree in Chemical Engineering. He is employed by a defense contractor as a Quality Engineer, and is applying for a security clearance in connection with his employment.

Paragraph 1 (Guideline H - Drug Involvement). The Government alleges that the Applicant is ineligible for clearance because he abuses illegal drugs.

The Applicant admitted that he has used marijuana approximately on an annual or bi-annual basis from 1988 until the summer of 2006. He has never purchased or sold marijuana or used any other illegal drug. (See Government Exhibit 2).

The Applicant explained that he first used marijuana while in college, in 1988. He used it at parties or social gatherings several times a year. This use continued, once or twice a year, until he graduated in 1994. From 1994 to 1999, he does not remember if he used it, but at the most it was once or twice a year. From 1999 until his last use in 2005 or 2006, he used it once every other year, or at least seven times. His college friends that he used marijuana with have moved away and so he only sees them when they visit about once every three years or so. (Tr. pp. 22-25).

In January 5, 2007, the Applicant completed a security clearance application wherein he revealed his illegal marijuana use. (See Government Exhibit 1). A statement of an interview of the Applicant conducted on June 25, 2007, prepared by the Special Agent from the Defense Security Service, indicates that the Applicant intends on continuing his pattern of marijuana use in the future. The Applicant explained that he was very uncomfortable during the interview and in response to the question said, "I guess so" in the affirmative instead of clarifying himself. (See Government Exhibit 2).

In his answer to the SOR, dated October 30, 2007, however, the Applicant denied the fact that he intends to continue using marijuana.

The Applicant stopped using marijuana in 2006, about the time he started working for a defense contractor. He understands the law and DoD policy that prohibits the use of illegal drugs. (See Government Exhibits 3 and 4). He has decided to commit himself to a drug free lifestyle.

The Applicant married in 1999. He has a five year old daughter and another child on the way. He regrets using marijuana in the past, is embarrassed by it, and has no intentions of ever using it again.

The Applicant's performance appraisal for the period from January 2007 through December 2007 reflects that he either "meets performance requirements" or "exceeds performance requirements" in every category. (See Applicant's Post-Hearing Exhibit).

## POLICIES

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

### Guideline H (Drug Involvement)

24. *The Concern.* Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

#### Conditions that could raise a security concern:

25.(a) any drug abuse;

25.(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution; or possession of drug paraphernalia;

#### Condition that could mitigate security concerns:

26.(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about th his performance evaluation reflects that he is a valuable asset to his company e person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

## **CONCLUSIONS**

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore

appropriately concerned when available information indicates that an Applicant for clearance may be involved in drug abuse that demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has engaged in drug involvement (Guideline H). The totality of this evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

Considering all of the evidence, the Applicant has introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guideline H of the SOR.

Under Guideline H, Drug Involvement, disqualifying conditions, *25(a) any drug abuse, 25(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution or possession of drug paraphernalia, and 22(g) any illegal drug use after being granted a security clearance* apply. However, mitigating condition *26(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment* also applies. Applicant's history of marijuana use started in college and continued until 2006, on an annual or semi-annual basis until he became employed in his field of study, that of an Engineer. Applicant's last use of marijuana occurred in 2006, over two years ago. He credibly testified that he has no intentions of ever using any illegal drug in the future.

I have also considered the "whole person" concept by considering the totality of the Applicant's conduct and all of the circumstances, using the nine adjudicative process factors listed above. Over the past two years, the Applicant has grown up, matured and realizes his mistakes of the past. He has a family now and the responsibilities that go along with it. His performance evaluation reflects that he is a valuable asset to his company. He now understands the privilege and seriousness of holding a security clearance and will do nothing to jeopardize it. Under the particular facts of this case, I do not find his past use of marijuana to be recent or of security significance (factor A(3)), and that the likelihood of recurrence is close to nil (factor A(8)).

This Applicant has demonstrated that he is trustworthy, and that he meets the eligibility requirements for access to classified information. Accordingly, I find for the Applicant under Guideline H (Drug Involvement).

On balance, it is concluded that the Applicant has overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the SOR.

### **FORMAL FINDINGS**

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

Paragraph 1: For the Applicant.

Subpara. 1.a.: For the Applicant.

Subpara. 1.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 the Applicant.

Darlene Lokey Anderson  
Administrative Judge