

KEYWORD: Drugs; Alcohol; Personal Conduct

DIGEST: Applicant has a history of abuse of mood-altering substances from 1975 to August 2000. At the urging of his then fiancée, Applicant underwent treatment for cocaine dependence and alcohol dependence from August 1999 to October 1999 in an intensive outpatient program. He resumed drinking in October 1999 and continued to consume alcohol to August 2000 against his therapist's advice. He lied about his illegal drug use on a September 1999 security clearance application. While Applicant has been abstinent from drugs since August 1999 and from alcohol since August 2000, and under the care of a LCSW since October 2000, there is no evidence as to his progress or current prognosis. He was not completely candid about his drug use until a second DSS interview, which was in May 2000. Clearance is denied.

CASE NO: 00-0607.h1

DATE: 11/19/2001

DATE: November 19, 2001

In Re:

SSN: -----

Applicant for Security Clearance

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DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esq., Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated July 26, 2001, 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on: 1) illegal drug involvement (guideline H); 2) excessive alcohol consumption (guideline G) with a diagnosis of alcohol dependence; and 3) personal conduct (guideline E) related to deliberate falsification of a September 1999 security clearance application.

On August 15, 2001, Applicant responded to the allegations set forth in the SOR and requested that his case be determined on the written record in lieu of a hearing. The Government submitted its File of Relevant Material on August 28, 2001, a copy of which was forwarded to Applicant by letter dated August 29, 2001, with instructions to submit additional information and/or any objections within thirty days of receipt. Applicant filed a response dated September 13, 2001, to which the Government had no objection. On September 26, 2001, the case was assigned to me for a decision.

FINDINGS OF FACT

After a thorough review of the evidence, and on due consideration of the same, I render the following findings of fact:

Applicant is a 44-year-old senior software engineer with a history of illicit substance abuse and excessive alcohol consumption. He has been employed by a defense contractor since January 1997, following six years as a software engineer in a civilian capacity for the United States military.

Applicant began to drink alcohol in 1975, and his drinking pattern remained consistent at a twelve-pack of beer per week until 1997. During the summer of 1975 after he graduated from high school, Applicant tried marijuana. When he found that it intensified the alcohol high, Applicant began to smoke it "all day," purchasing the drug at a cost of \$25.00 per week. As a college student in 1976, he tried to sell three \$5.00 bags of marijuana to fellow students, but instead ended up smoking the marijuana. In 1977, Applicant took three Darvocet pills which had been prescribed for one of his parents. Circa 1978, his involvement with marijuana decreased in that he limited it to once per day.

Applicant continued to smoke marijuana on a daily basis until 1986, purchasing it at a cost of \$30.00 per month. In 1980, he became involved with more dangerous illegal drugs. Between 1980 and 1986, Applicant ingested LSD once to twice per year, which he bought at a cost of \$1.00 per "hit." In 1981, he became a sound engineer for a rock group. He began to use cocaine once to twice per year. Although Applicant obtained cocaine from friends, he also purchased the illicit substance three or four times at a cost of \$50.00 on each occasion.

In 1986, Applicant stopped working as a sound engineer for the rock band. His involvement with marijuana decreased thereafter to where he smoked it on average five times per year until his last use in 1999. Over the years 1986 to 1999, Applicant purchased marijuana on ten occasions at a cost of \$35.00 each time. While his use of cocaine initially remained consistent at once or twice per year, it increased in 1995 to four or five times per year. During the 1995 to 1999 time frame when he was snorting cocaine four or five times per year on average, he obtained the drug through purchase, at a cost of \$50.00 to \$100.00 per occasion.

In December 1990, Applicant commenced employment as a software engineer in a civilian capacity for a branch of the United States military. Sometime in 1992, Applicant was required to execute a security clearance application for a Secret security clearance. Applicant lied about his illegal drug involvement on that application as he thought he would be fired or denied a security clearance due to his occasional drug use. With the Government unaware of Applicant's abuse of marijuana and cocaine, Applicant was granted the security clearance. In 1996, Applicant executed a security clearance application in request for a clearance upgrade to Top Secret. Applicant reported thereon that he had used marijuana. ⁽¹⁾ On reviewing his application, security officials withdrew the request for a clearance upgrade and directed him to seek counseling to demonstrate that his "past use" of marijuana was not a problem. Applicant attended one session with a counselor. No adverse action was taken against Applicant by his Government employer as a result of his admission of illegal drug involvement, but it was apparent to him that his security clearance could be in jeopardy as a result. Applicant continued to use marijuana on the order of five times per year and cocaine four to five times per year. In January 1997, Applicant commenced work for his present employer.

Circa 1998, Applicant's alcohol consumption began a gradual increase. By at least the Fall of 1998, Applicant was drinking six to seven days per week in quantity ranging from three to twelve beers per occasion. Applicant began to experience blackouts after occasions of heavy drinking and symptoms of increased tolerance. He also commenced an involvement with methamphetamine in 1998 when cocaine was unavailable. On five or six occasions over the next year, Applicant ingested methamphetamine as a substitute for cocaine. On one occasion in 1998, Applicant also used LSD.

In October 1998, Applicant's family physician prescribed Prozac for Applicant to treat symptoms of road rage.

Over the June to August 1999 time frame, Applicant snorted cocaine on three occasions. During the second week of August 1999, he used methamphetamine after he purchased what he thought was cocaine from a friend. When the drug did not produce the same high as cocaine, Applicant confronted his friend, who told him the drug was methamphetamine.

Drinking almost every night, Applicant in August 1999 lost his temper with his fiancée's daughter when he was under the influence of alcohol. At his fiancée's suggestion that he talk to someone about his alcohol and illegal drug use, Applicant in August 1999 consulted with a licensed clinical social worker (LCSW) affiliated with his company's employee assistance program (EAP). The LCSW assessed Applicant as suffering from alcohol dependency and directed him to an intensive outpatient substance abuse program at a local hospital.

Following an initial intake evaluation on or about August 18, 1999, where Applicant was provisionally diagnosed as suffering from alcohol dependence and cocaine dependence, Applicant on August 23, 1999, began treatment in the intensive outpatient hospital program. At the time of his admission, Applicant was on a daily dose of Prozac. He also reported a last use of alcohol the day before. Feeling pressure from his significant other to "get well," Applicant initially entered treatment to repair his relationship with his significant other. Over the course of the six-week program, Applicant was compliant with the treatment plan, attending the outpatient sessions and twelve-step meetings as required. Random drug screens taken during the program were negative for substances tested, including amphetamines, cocaine and THC metabolites. Over the course of treatment, Applicant's motivation changed to where his goal became maintaining sobriety. Applicant completed the program, and on October 5, 1999, was discharged with a diagnosis of alcohol dependence and cocaine abuse. (2) Planned aftercare plans included step work weekly with his sponsor, three twelve-step meetings per week, and an aftercare meeting at the hospital once per week. Although he showed some insight during his treatment, Applicant was given a guarded prognosis for recovery and assessed at risk for relapse should he fail to participate in planned aftercare.

While he was still a participant in the intensive outpatient program, Applicant in September 1999 was asked by his employer to execute a security clearance application (SF 86). Applicant responded "NO" to question 27 ["Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?"] and to question 28 ["Have you EVER illegal used a controlled substance while employed as a law enforcement officer, prosecutor or courtroom official; while possessing a security clearance; or while in a position directly and immediately affecting public safety?"]. He deliberately concealed his involvement with illegal drugs to be consistent with his earlier lie on the clearance application completed in 1992. Applicant responded "YES" to question 30 ["In the last 7 years has your use of alcoholic beverages (such as liquor, beer, wine) resulted in any alcohol-related treatment or counseling (such as for alcohol abuse or alcoholism)? Do not repeat information reported in module 21 on form SF 86 (Your medical record)."], and listed the substance abuse treatment he was then undergoing.

During the outpatient substance abuse treatment program and for about five weeks following his discharge, Applicant continued to see the LCSW affiliated with his company's EAP. During a session on October 20, 1999, Applicant reported he had started drinking again. Applicant stopped seeing the therapist in November 1999 as he wanted to drink socially and could not commit to the abstinence recommended by this counselor.

From October 1999 to at least January 2000, Applicant consumed a six-pack of beer and a couple of glasses of wine per week. In December 1999, Applicant's fiancée and his two children moved into his home, which required some adjustment on his part.

In January 2000, Applicant was interviewed by a Defense Security Service (DSS) agent about his substance abuse, treatment, and failure to be candid about his illegal drug involvement on his SF 86. Applicant detailed his ingestion of marijuana from July 1975 to August 1999, cocaine from 1981 to August 1999, LSD from 1980 to 1986 and once in 1998, Darvocet in about 1977 when it had not been prescribed for him, and alcohol from 1975 to the Sunday before the interview, where he consumed three beers during a football game. Applicant attributed the escalation in his drug abuse in the last few years to increasing depression. Applicant denied any intent to use illegal drugs in the future. He indicated he had no plan to drink but found himself engaging in moderate consumption during a social event. Asked why he had lied about his drug use on his security clearance applications, Applicant responded, "In 1992, when I first lied on my secret clearance application, I thought I would be fired or not get my clearance because of my occasional drug use. Then I had to lie on this recent clearance update, to follow the past lie in 1992." Applicant volunteered that he had an appointment scheduled for the end of the month with a psychiatrist to help him deal with the changes in his life, to include the recent cohabitation with his fiancée and her children.

Since approximately late January 2000, Applicant has been under the care of this psychiatrist, who prescribed him Prozac 20 mg. and Depakote 250 mg. daily for treatment of the irritability which led him to self-medicate with drugs and alcohol in the past.

In May 2000, Applicant was interviewed about his omission from his SF 86 of his counseling in 1996 and his failure to report on his security clearance application or during his prior interview that he had used methamphetamine. Applicant explained he had forgotten about the counseling which consisted of only one visit. He detailed his use of methamphetamine as a substitute for cocaine on five to six occasions from 1998 to 1999. As to why he did not report it during his first interview when he had been asked about it, Applicant answered, "I suppose that I just tried to minimize my drug use by stating that."

From January 2000 to August 2000, Applicant consumed alcohol occasionally, not to intoxication. In October 2000, Applicant commenced biweekly sessions with an LCSW who has helped him learn new ways of coping with stress and irritability. As of mid-August 2001, Applicant was still seeing this LCSW and he was no longer in denial of his alcohol and drug problem.

Sometime prior to August 2001, Applicant married his fiancée. Applicant and his spouse had a daughter in late 2000. These lifestyle changes have brought him happiness.

Applicant has remorse for his lack of candor on his security clearance application and for using illegal drugs after he was granted a Secret security clearance.

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each

adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. See Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. See Directive 5220.6, Enclosure 2, Section E2.2.4.

Considering the evidence as a whole, I find the following adjudicative guidelines to be most pertinent to this case:

GUIDELINE H

Drug Involvement

E2.A8.1.1. The Concern:

E2.A8.1.1.1. 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.

E2.A8.1.1.2. Drugs are defined as mood and behavior-altering substances, and include:

E2.A.8.1.1.2.1. 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

E2.A8.1.1.2.2. Inhalants and other similar substances.

E2.A8.1.1.3. Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

E2.A8.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A8.1.2.1. Any drug abuse (see above definition);

E2.A8.1.2.2. Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.

E2.A8.1.2.3. Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence

E2.A8.1.2.4. Evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program

E2.A8.1.2.5. . . .Recent drug involvement, especially following the granting of a security clearance. . .will almost invariably result in an unfavorable determination

E3.A8.1.3. Conditions that could mitigate security concerns include:

E2.A8.1.3.3. A demonstrated intent not to abuse any drugs in the future.

GUIDELINE G

Alcohol Consumption

E2.A7.1.1. The Concern: Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

E2.A7.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A7.1.2.3. Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence

E2.A7.1.2.4. Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program

E2.A7.1.2.5. Habitual or binge consumption of alcohol to the point of impaired judgment

E2.A7.1.2.6. Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program

E2.A7.1.3. Conditions that could mitigate security concerns include:

E2.A7.1.3.3. Positive changes in behavior supportive of sobriety

GUIDELINE E

Personal Conduct

E2.A5.1.1. The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly

safeguard classified information.

E2.A5.1.2. Conditions that could raise a security concern and may be disqualifying also include:

E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination.

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

* * *

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the 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 is nonetheless security worthy. As noted by the United States Supreme Court in *Department of 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." Any doubt as to whether access to classified information is clearly consistent with national security will

be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following with respect to guidelines H, G and E:

Applicant has a twenty-five-year history of involvement with mood-altering substances, alcohol as well as a variety of illegal drugs. Applicant continued to use marijuana and cocaine occasionally after he became employed by the United States military and was granted a Secret security clearance. In 1995, his abuse of cocaine increased to four or five times per year. Applicant enjoyed especially the effects of cocaine. In addition to using cocaine when it was available, Applicant over the 1998/99 time frame used methamphetamine in substitution when he was unable to procure cocaine, as he had been promised methamphetamine would produce a similar high. After not using LSD since 1986, he tried it again in 1998. Such drug use is incompatible with holding a security clearance because of the obvious potential for impairment when one is under the influence as well as the demonstrated disregard for the laws proscribing such involvement. Disqualifying condition (DC) E2.A8.1.2.1. (any drug abuse) must be considered in evaluating Applicant's security suitability. With the exception of the 1981 to 1986 time frame when Applicant was provided some drugs free, he purchased the illegal drugs for his personal consumption. Hence, DC E2.A8.1.2.2. (illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution) applies as well. Furthermore, since Applicant was diagnosed as suffering from cocaine abuse by an LCSW as well as by a medical physician affiliated with a hospital's intensive outpatient substance abuse treatment program, DCs E2.A8.1.2.3. and E2.A8.1.2.4. are apposite.

Applicant submits in mitigation his abstention from any illegal drug since August 1999 and significant lifestyle changes. There is no evidence he has used any illicit drug since he entered the intensive outpatient program, which he completed in early October 1999. While the Directive provides for mitigation where drug abuse is not recent (MC E2.A8.1.3.1.), in the security clearance context one cannot ignore both the duration and extent of drug involvement in determining whether enough time has passed to conclude there is little risk of future drug abuse. Applicant has a twenty-four-year history of involvement with controlled dangerous substances, with an escalation in Summer 1999 when he snorted \$300.00 worth of cocaine every couple of months. In aggravation, he ingested illegal drugs for most of his adult life and after he was granted access to classified information. Under the Directive, recent drug involvement, especially following the granting of a security clearance, will almost invariably require denial or revocation of a security clearance (See DC E2.A8.1.2.5.).

Conceivably, rehabilitation efforts may be such to warrant a grant of clearance even where there has been recent drug involvement. While Applicant is to be credited for completing the intensive phase of the outpatient treatment program, it is not clear that he fulfilled all the aftercare requirements. At the time of his discharge in October 1999, Applicant's prognosis was guarded. By November 1999, he had terminated his treatment sessions with the EAP LCSW because he rejected the therapist's advice to abstain from alcohol. While there is no evidence he relapsed into illegal drug use, his actions raise doubts about his reform and participation in aftercare. There is no documentation of any sessions attended after November 11, 1999, or of any ongoing step work. Although Applicant has apparently been under the care of a psychiatrist since late January 2000 and attended sessions with an LCSW since October 2000, there is no evidence as to his progress or his current prognosis. While there have been some changes in Applicant's personal circumstances which augur favorably against recurrence (See MC E2.A8.1.3.3.), primarily the birth of his daughter, he presented little from

which I could conclude with confidence that his drug use is safely of the past. Subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.i., (3) and 1.j. are thus resolved against him. Although Applicant was diagnosed as suffering from cocaine dependence as alleged, that diagnosis was only provisional and not confirmed after further evaluation. Hence, subparagraph 1.h. is resolved in Applicant's favor.

A polysubstance abuser, Applicant consumed a twelve pack of beer per week for over twenty years without any apparent legal, social or occupational adverse effect. This pattern of consumption led to increased drinking in 1998. For the eighteen to twenty-four months preceding his admission into the intensive outpatient treatment program in August 1999, Applicant drank six to seven days per week, in quantities ranging from three beers to twelve beers per occasion. With Applicant experiencing blackouts after heavy drinking and increased tolerance to alcohol, his fiancée urged him to seek professional assistance. At the referral of an LCSW affiliated with his employer's EAP, Applicant entered the intensive outpatient treatment program where he was diagnosed as suffering from alcohol dependence. Under the adjudicative guideline pertinent to alcohol consumption (guideline G), pertinent disqualifying conditions include E2.A7.1.2.3. (diagnosis by a credentialed medical professional of alcohol dependence), E2.A7.1.2.4. (evaluation of alcohol dependence by a licensed clinical social worker who is a staff member of a recognized treatment program) and E2.A7.1.2.5. (habitual or binge consumption to the point of impaired judgment). Discharged in early October 1999 after completing the intensive phase of his rehabilitation, Applicant resumed drinking on or about October 20, 1999. In November 1999, he stopped his treatment with the EAP LCSW because he wanted to continue to drink. Whereas Applicant continued to consume alcohol to at least August 2000, against professional advice and after he had completed an alcohol rehabilitation program in treatment of medically diagnosed dependence, DC E2.A7.1.2.6. also must be considered in this case.

Applicant submits he has been alcohol-free for the last year. While this recent period of abstinence is a positive change in behavior supportive of sobriety (MC E2.A7.1.3.3.), the magnitude of Applicant's alcohol problem, manifested in the diagnosis of alcohol dependence, requires more in mitigation. Under MC E2.A7.1.3.4. excessive consumption to the point of dependence is mitigated when there is successful completion of inpatient or outpatient rehabilitation along with aftercare requirements, frequent participation in meetings of Alcoholics Anonymous or similar organization, abstinence from alcohol for a period of at least 12 months, and a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program. The success of the intensive outpatient treatment program is questionable, given Applicant lacked sufficient insight into his alcohol problem following his discharge. Even after Applicant began taking Depakote and Prozac for depression in late January 2000, he continued to consume alcohol on occasion until at least August 2000. Applicant reports learning new methods of coping with stress from the LCSW he began seeing in October 2000. However, as discussed above in the context of guideline H, there is no evidence of a favorable prognosis or of a demonstrated commitment to AA or similar organization. Unable to conclude from the evidence presented that Applicant is not likely to abuse alcohol in the future, I find against him with respect to subparagraphs 2.a., 2.b., 2.c., and 2.d. of the SOR.

The Government's case under guideline E, personal conduct, is based on Applicant's lack of candor on his September 1999 SF 86. Applicant does not dispute that he falsified his security clearance application by denying any illegal drug involvement within seven years of the application and by denying that he had used illegal drugs while he held a Secret security clearance. Although not alleged by the Government, Applicant was not forthcoming about his drug use on a prior security clearance application completed in about 1992, after which he was granted his Secret clearance. The deliberate omission, concealment or falsification of relevant and material facts from any personnel security questionnaire is potentially security disqualifying (See DC E2.A5.1.2.2. under personal conduct), as it could indicate that the individual may not properly safeguard classified information.

None of the mitigating conditions pertinent to deliberate falsification of a security clearance questionnaire are applicable in this case. Applicant had used methamphetamine, cocaine, and marijuana in the month preceding his execution of the SF 86 in September 1999. Clearly, information reflecting recent controlled dangerous substance use is pertinent to a determination of judgment, trustworthiness or reliability. To Applicant's credit, he detailed all but his recent use of

methamphetamine when he was interviewed by a special agent of the DSS in January 2000. The DOHA Appeal Board has recently reaffirmed in ISCR 01-06166 (decided on October 25, 2001), that where a case involves disclosures by an applicant that are corrections of an earlier falsification, MC E2.A5.1.3.3. (individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts) rather than MC E2.A5.1.3.2. (falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily) is proper for consideration. However, whereas Applicant was not candid until his second DSS interview about his methamphetamine involvement, his initial effort at rectification was only partial. While he admitted his methamphetamine abuse when interviewed in May 2000, that disclosure cannot reasonably be viewed as prompt. Furthermore, even with respect to that interview, it is not at all clear that he volunteered the information up-front, before being confronted.

In his favor, Applicant has expressed remorse for his misrepresentation. Acceptance of responsibility for one's wrongdoing is an important step in reform, but it must be accompanied by a track record of conduct proving rehabilitation. It stands to reason that the more serious the misconduct, the greater the evidence of rehabilitation must be to overcome the doubts for judgment, trustworthiness and reliability. While the Government alleged only falsification of the September 1999 SF 86, Applicant was not completely candid about his controlled dangerous substance use on a 1992 security questionnaire. Although Applicant listed marijuana use on a subsequent clearance application completed for a clearance upgrade in 1996, there is no indication he reported on that form that he had continued to use cocaine as well. When provided the opportunity to set the record straight in September 1999, he elected to deny any drug use. In January 2000, he chose not to reveal to the DSS agent his use of methamphetamine. Applicant's belated admissions of his drug involvement fall short of overcoming a pattern of placing his personal interest ahead of his obligation to be candid with the Government. Subparagraphs 3.a. and 3.b. are resolved against him.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline H: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: For the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: Against the Applicant

Paragraph 2. Guideline G: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against the Applicant

Subparagraph 2.d.: Against the Applicant

Paragraph 3. Guideline E: AGAINST THE APPLICANT

Subparagraph 3.a.: Against the Applicant

Subparagraph 3.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.

Elizabeth M. Matchinski

Administrative Judge

1. Applicant informed a Defense Security Service agent in May 2000 that he had attended one counseling session as a result of reporting his marijuana use on a security clearance application in 1996. Applicant explained security personnel advised him to seek counseling "to show that [his] past use of marijuana was not a problem." (Item 6). Apparently, Applicant admitted to the use of marijuana when he completed the security clearance application. However, the extent of his disclosure is not clear. While Applicant may not have been using drugs at or around the time he filled out the application, he admits he used illicit substances in 1996 and subsequent years until August 1999.

2. This discharge diagnosis was rendered by his primary therapist, an LCSW on the staff of the hospital's substance abuse treatment program. While there was a diagnosis of cocaine dependence rendered on August 19, 1999 and ratified by signature of Applicant's attending physician on August 31, 1999, Applicant's treatment plan, which was also signed by the physician on August 31, 1999, reflects a diagnosis of alcohol dependence and cocaine and cannabis abuse. The diagnosis of cocaine dependence was provisional only.

3. Applicant's participation in treatment is viewed as favorable. The subparagraph is resolved against him, however, as it is not clear that he complied with aftercare requirements.