

DATE: December 30, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 00-0627

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

William S. Fields, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant was less than candid as to the true extent of his past drug abuse on a May 1998 Questionnaire for National Security Positions, again in a November 1998 sworn statement, and for a third time in an August 1999 sworn statement. These repeated wilful falsifications are also a violation of 18 U.S.C. 10001. Clearance is denied.

**STATEMENT OF THE CASE**

On November 2, 2000, 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 a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on December 8, 2000.

Applicant elected to have this case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on February 8, 2001. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received his copy on September 24, 2001, and Applicant's reply was received on or about October 24, 2001. The case was received by the undersigned for resolution on December 30, 2002. The issues raised here are whether the Applicant's repeated personal conduct and related criminal conduct militate against the granting of a security clearance.

**FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the File of Relevant Material and Applicant's Response. The Applicant is 44 years of age and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant.

## Guideline E - Personal Conduct & Guideline J - Criminal Conduct

1.a. and 2.a. In answering question 24 on a May 1998 Questionnaire for National Security Positions (QNSP), the Applicant knowingly and wilfully failed to disclose the full extent of his past drug abuse (Item 4 at page 8, Item 7 at page 1, and Item 8 at page 1). He failed to disclose that he used cocaine from September of 1992 to September of 1996; that he used crack cocaine, at times on a daily basis, from January of 1995 to September of 1996; and that he used marijuana, at times monthly during 1991 (*id*). This wilful falsification is a violation of 18 U.S.C. 1001.

1.b. and 2.a. In a signed sworn statement, executed by the Applicant on November 17, 1998, the Applicant again knowingly and wilfully failed to disclose the full extent of his past drug abuse (Item 9 at pages 1~2, Item 6 at page 16, and Item 7 at pages 1~2). He failed to disclose that he used both hashish and cocaine while serving in the United States Air Force from about 1997 until 1982; that he used heroin in 1985; that he used LSD from about 1985 until 1992; that he tested positive for cocaine and received treatment for Cocaine Dependence in 1991; that he used crack cocaine, at times on a daily basis, from January of 1995 to September of 1996; and that he sold illegal drugs (*id*). This wilful falsification is also a violation of 18 U.S.C. 1001.

1.c. and 2.a. In a signed sworn statement, executed by the Applicant on August 4, 1999, the Applicant, for the third time, knowingly and wilfully failed to disclose the full extent of his past drug abuse (Item 5 at page 2, Item 6 at page 16, and Item 7 at pages 1~2). This wilful falsification is a third violation of 18 U.S.C. 1001.

The Applicant explains the reason for his repeated falsifications in his answer to the SOR:

I knew employees who were discharged for not being able to obtain security clearances. I didn't want the consequences of my previous drug usage to continually become a detriment to my family. I knew my attendance(*sic*) to(*sic*) treatment facilities was documented but the uncertainty of not knowing if my drug usage prior to my employment would get me discharged was the sole reason for my not being forthright (Item 3 at page 3).

### Mitigation

The Applicant offers little in the way of mitigation.

## **POLICIES**

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. The conditions should be followed in every case according to the pertinent criterion, however, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security clearance case presents its own unique facts and circumstances, it should not be assumed that these conditions exhaust the realm of human experience, or apply equally in every case. Conditions most pertinent to evaluation of this case are:

### Personal Conduct

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

- (2) The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . . or similar form . . . ;
- (3) Deliberately providing false or misleading information concerning relevant and material matters to and investigator . . . in connection with a personal security or trustworthiness determination;

#### Conditions that could mitigate security concerns:

None.

## Criminal Conduct

### Condition that could raise a security concern:

(1) Allegations or admission of criminal conduct, regardless of whether the person was formally charged;

### Conditions that could mitigate security concerns:

None.

As set forth in the Directive, "[each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future."

The Administrative Judge, however, can only draw those inferences or conclusions that have a 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.

The Government must make out its case under Guideline E (personal conduct), and Guideline J (criminal conduct); which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

Personal conduct is conduct involving questionable judgement, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places. If an applicant has demonstrated a lack of respect for the law in his private affairs, there then exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

## **CONCLUSIONS**

The Applicant was not truthful as to the full extent of his past drug abuse on three separate occasions: when he fill out his QNSP in May of 1998, six months later when he executed a sworn statement in November of 1998, and eight months after that when he executed a sworn statement in August of 1999. It was only with the Government's submission of the Applicant's medical and treatment records that the full extent of the Applicant's past drug abuse came to light (Items 6, 7 and 8). The Applicant has yet to admit the true extent of his drug involvement. This lack of candor is clearly of security significance; and as such, Guidelines E and J are found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his personal conduct and

related criminal conduct. The Applicant has thus not met the mitigating conditions of Guidelines E and J, and of Section E.2.2. of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guidelines E and J.

### **FORMAL FINDINGS**

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.

Paragraph 1: AGAINST THE APPLICANT

- a. Against the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

### **DECISION**

In light of 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 the Applicant.

Richard A. Cefola

Administrative Judge