DATE: August 27, 2001

In Re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 00-0719

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

When completing her Security Clearance Application, the Applicant indicated she had used cocaine occasionally for a two-year period. She failed to indicate her usage was over a 16-year period, at times, using up to $300.00 of cocaine per day, and that she had been treated numerous times for cocaine dependence. Nor was she truthful when initially interviewed by the Defense Security Service. Clearance is denied.

STATEMENT OF THE CASE

On December 8, 2000, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating DOHA could not make the preliminary affirmative finding[(1)] it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On December 26, 2000, the Applicant answered the SOR and elected to have her case decided on the written record, in lieu of a hearing.

The Applicant received a complete copy of the file of relevant material (FORM) dated March 20, 2001, and was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. The Department Counsel presented ten exhibits (Items) in the FORM. The Applicant's response to the FORM was due on April 29, 2001. No response has been received. I was assigned the case on July 10, 2001. The record in this case closed on July 10, 2001.

FINDINGS OF FACT

The SOR alleges falsification of a Security Clearance Application, Std. Form 86, under personal conduct, (Guideline E), and also alleged under criminal conduct (Guideline J). The Applicant denies the allegations in subparagraph 1.e. and denies intentionally falsifying information.

The Applicant is 35-years-old and has worked for a defense contractor since October 1998. She is seeking to obtain a security clearance.

The Applicant used marijuana with varying frequencies, from 1982 to 1989. The Applicant started snorting cocaine at age 17. The Applicant used crack cocaine, from 1983 until February 1995. At times her use was daily and to the point of dependence. From March 1993 until December 1993 she was smoking (free basing) crack cocaine spending between $100.00 and $300.00[(2)] per day. The Applicant admitted her cocaine use became problematic. She denies smoking up to $300.00 daily (Item 10, page 111) and stated a more accurate estimate of her use was four times a week at a cost of $100.00 to $200.00 per week. (Item 7, page 121) Starting on January 1, 1994, the Applicant attended a 15-day inpatient treatment for cocaine dependence. Her last use of marijuana had been five years prior to her admission. Her last cocaine use had been the prior day, when she smoked cocaine "all day." (Item 10, page 46) Prior to her January 1994 admission she had been smoking cocaine daily since March 1993. The medical records state the Applicant recognized she had a major problem in that she "never took pipe out of [her] mouth."(Item 10, page 73) The man she had dated for two years was a drug dealer. (Item 10, page 101; Item 7, page 3)

From January 1994 through February 1994, the Applicant attended an intensive outpatient treatment and was again diagnosed with cocaine dependence. During outpatient treatment, the Applicant tested positive for cocaine. (Item 10, pages 67, 77) The Applicant was discharged from the treatment program and two days later returned to intensive outpatient treatment. The Applicant told the group she used cocaine again following an argument with her boyfriend. (Item 10 page 78) The Applicant was discharged from the program after missing three group therapy sessions. In February 1995, the Applicant went to a different health provider, a mental health center, for help with her crack cocaine problem. The Applicant had relapsed by smoking crack cocaine two or three times a week. In arch 1995, the Applicant was scheduled for a medical evaluation but failed to show up for her appointment.

In October 1990, the Applicant was arrested for driving while intoxicated (DWI). She had been drinking beer during happy hour and was stopped for speeding going home. In February 1991, she drank beer while attending a party at a friend's house. While driving home, she was stopped for speeding, given a roadside breathalyser test which she failed, and was arrested for DWI. She received a $500.00 fine, 90 days in jail (suspended), 18 months probation, and was ordered to attend an alcohol treatment program. The Oct 1990 DWI charge was dismissed contingent on her plea of guilty to the February 1991 DWI. In September 1991, she completed a 26-week alcohol treatment program. She also attended alcoholics anonymous (AA) from June 1991 to December 1991.

The Applicant was arrested in November 1994 and charged with two counts of "bad checks/theft." The checks, totaling $350.00, had been written to a grocery store for groceries. She had received notices the checks had been returned for non sufficient funds, and she failed to pay them. When arrested for speeding, a routine check discovered the two arrest warrants. Following her arrest, the Applicant paid off the checks and the matter was placed on the Stet docket.

In October 1998, the Applicant signed a Security Clearance Application, Std. Form 86. (Item 4) The Applicant was asked in question 24 if she had ever been charged with or convicted of any offenses related to alcohol or drugs. She listed her 1991 DWI offense but failed to list her 1990 DWI arrest. In question 26 the Applicant was asked if, during the previous seven years, she had been arrested for, charged with, or convicted of any offense not previously listed. The Applicant answered "no" to this question even though she had been arrested in 1994 on two counts of "bad checks/theft."

In response to question 27, which asked her about the use of illegal drugs, the Applicant indicated she had occasionally used cocaine between June 1993 and June 1995. She failed to list her extensive cocaine use to the point of dependence.

On June 11, 1999, the Applicant made a signed, sworn statement (Item 5) to a special agent of the Defense Security Service (DSS). In the statement, the Applicant stated she had failed to list her 1990 DWI because it had been dismissed. She was unaware she had to list all arrests. In the same statement, she denied any other criminal offenses, even though she had been arrested in 1994 for the two bad check offenses. In this statement, the Applicant said she used cocaine in powder form twice monthly from June 1993 to June 1995, spending approximately $50.00 per month for cocaine. She said she started using cocaine due to peer pressure, used it at social gatherings with her friends and with her then boy friend, a drug dealer (Item 7, page 3). She denied using any other illegal drug and stated her cocaine use had not resulted in medical treatment. She said her last use was in June 1995.

On June 21, 1999, the Applicant made another sworn statement (Item 6) to the DSS special agent. In that statement, she indicated she had attended and successfully completed a 10-day inpatient substance abuse treatment program. She denied she had any outpatient treatment or after care treatment but acknowledged attending some Narcotics Anonymous (NA) meetings during the following year. In the June 21, 1999-statement, the Applicant indicated her prior disclosure of cocaine use was in error when she stated she had used from June 1993 to June 1995; she had actually used cocaine from January 1991 until January 1993. She also denied having used any other illegal drugs.

On July 21, 1999, Applicant made another sworn statement (Item 7) to a DSS special agent. In the statement, the Applicant stated she did not recall seeking treatment at the mental health center in February 1995 and denied she had relapsed on crack cocaine. She stated her last use of cocaine and last counseling or treatment had occurred in February 1994. She failed to list her outpatient treatment because she forgot about it. The Applicant discontinued outpatient treatment after four weeks because her insurance would not pay for it and she was unable to pay for it. She attended NA

meetings from January 1994 until mid 1995. She says she failed to disclose the full extent of her cocaine usage because she could not recall specific dates and frequencies.

On November 19, 1999, Applicant made yet another sworn statement (Item 8) to a DSS special agent in which she stated she had failed to mention her 1994 arrest for two counts of bad checks/theft because she had forgotten about it.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, access, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, but must also demonstrate the facts proven have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

PERSONAL CONDUCT (Guideline E) 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.

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

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.A5.1.2.2.)

Conditions that could mitigate security concerns include:

None Apply.

CRIMINAL CONDUCT (Guideline J) The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. E2.A10.1.1.

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

1. Allegations or admission of criminal conduct, regardless of whether the person was formally charged. (E2.A10.1.2.1.)

2. A single serious crime or multiple lesser offenses. (E2.A10.1.2.2.)

Conditions that could mitigate security concerns include:

None Apply.

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 that burden, the burden of persuasion then shifts to the Applicant who must remove that doubt and establish her security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue her 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 she 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." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under guideline E, (Personal Conduct). Under Guideline E, the security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal conduct which creates doubt about the person's judgment, reliability, and trustworthiness. Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate and meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. The nature of Applicant's actions and activities, therefore pose a serious potential risk to the nation's security precautions which go to the very heart of the nation's security system.

In November 1998, when the Applicant completed her Standard Form 86, she gave untrue answers about her police record and her illegal drug usage. The Applicant was arrested twice for DWI, once in October 1990 and again in February 1991. Both offenses were handled in the same proceeding. In response to question 24, concerning her police record relating to alcohol and drug offenses, the Applicant listed her most recent DWI arrest but failed to list the other DWI arrest. Subparagraphs 1. a. and 1. a. (1) are resolved against the Applicant.

In response to question 26, concerning her police record relating to other offenses, she failed to list her November 1994 arrest for bad checks/ theft two counts. The Applicant's failure to disclose her arrest does not, in itself, prove she did so in a deliberate effort to conceal those facts from the government. The Applicant states she failed to list her arrest for the bad checks because she forgot about it. It does not appear her failure to list this arrest was a deliberate omission, concealment, or falsification and, therefore, subparagraphs 1. b., 1. b.(1), 1.d., and 1.j. are resolved in favor of the Applicant.

At her first interview with the DSS special agent in June 1999 (Item 5), the Applicant explained why she failed to list her other DWI -- because she was unaware she had to list arrests which were later dismissed -- but stated she had not been involved in any other criminal offenses. As previously stated she failed to remember and list her arrest for the two bad checks. She stated the extent of her cocaine use was twice a month from June 1993 through June 1995 spending $50.00 per month on cocaine. This was untrue. SOR subparagraphs 1.c. and 1.c.(1) are resolved against the Applicant. The Applicant started using cocaine in 1982 at age 17 while in high school. She used it until 1995. The Applicant became dependant on cocaine; she was dating a drug dealer, and starting in March 1993, her smoking of crack cocaine became problematic -- she never took the cocaine pipe out of her mouth. She was spending from $200.00 to $300.00 per day on cocaine. In the same sworn statement, the Applicant denied ever using any other illegal drugs. This was not true for she used marijuana between 1982 and 1989. The Applicant never explained why she failed to list her marijuana use. (3)

In her June 11, 1999-sworn statement (Item 5), the Applicant stated she had not received medical treatment for her cocaine use. This was false. Starting on January 1, 1994, the Applicant attended a 15-day inpatient treatment for cocaine dependence. From January 1994 through February 1994, the Applicant attended an intensive outpatient treatment, for cocaine dependence. In February 1995, the Applicant went to a different health provider for help with her crack cocaine problem. In her June 21, 1999-sworn statement (Item 6), the Applicant stated her cocaine use occurred between January 1991 and January 1993. This was false. The Applicant stated she had not listed her inpatient treatment because she had forgotten about it. Given the extensive nature of her treatment, it seems incredible she would have forgotten about it.

Since the information requested on the form was pertinent to a determination of judgment, trustworthiness, or reliability, MC 1 (4) does not apply. Although the Applicant later revealed to a Defense Security Service special agent the full extent of her cocaine usage, this admission was not a prompt, good-faith efforts to correct the falsification before being confronted with the facts. The Applicant failed to provide the full extent of her cocaine abuse until her third sworn statement (Item 7). Therefore, MC 3 (5) does not apply. This omission of material facts was not caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided, MC 4, (6) or a refusal to cooperate based on legal advice, MC 5. (7) The Applicant's falsifications occurred on her Std. Form 86 and in two sworn statements. MC 2 (8) does not apply because the falsifications were not isolate, are recent, and the individual did not subsequently provide correct information until questioned by the DSS. SOR Subparagraphs 1. e., 1. e. (1), 1.e.(2), 1.f. 1.f.(1), 1.f.(2), 1.f.(3), 1.f.(4), 1.g., 1.h., and 1.i., are resolved against the Applicant.

The Government has satisfied its initial burden of proof under Guideline J, (Criminal Conduct). Under Guideline J, the security eligibility of an applicant is placed into question when that applicant is shown to have a history or pattern of criminal activity creating doubt about her judgment, reliability, and trustworthiness. The Applicant gave false answers on her Std. Form 86. and in statements to the DSS. By certifying falsely that her responses were true, complete and correct to the best of her knowledge and belief, and made in good faith, the Applicant violated Title 18, Section 1001[(9)] of the United States Code. Her false answers are felonious conduct under the laws of the United States.

Because of this serious misconduct, there should be compelling reasons before a clearance is granted or continued. Candor is important, and the Applicant was unable or unwilling to be candid about her background. The period of time from the most recent falsification--June 1999--to the closing of the record, is insufficient to mitigate the Government's case. Accordingly, subparagraphs 2. and 2.a. are resolved against the Applicant.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

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

Paragraph 1 Guideline E (Personal Conduct): AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.a.(1): Against the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.b.(1): For the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.c (1): Against the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.e.(1): Against the Applicant

Subparagraph 1.e.(2): Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.f.(1): Against the Applicant

Subparagraph 1.f.(2): Against the Applicant

Subparagraph 1.f.(3): Against the Applicant

Subparagraph 1.e.(4): Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: For the Applicant

Paragraph 2 Guideline J (Criminal Conduct): AGAINST THE APPLICANT

Subparagraph 2.: Against the Applicant

Subparagraph 2.a.: 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 the Applicant.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 as amended.

2. The medical records indicate Applicant was smoking daily at a cost of a "couple of hundred dollars to $300.00." (Item 10, page 105)

3. It is noted her marijuana use occurred approximately 10 years before she completed her Std Form 86 and before her June 1999 interviews with the DSS. Additionally, her marijuana use was minor in comparison to her cocaine dependance.

4. E2.A5.1.3.1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability.

5. MC 3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts. E2.A5.1.3.3.

6. E2.A5.1.3.4. Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided.

7. E2.A5.1.3.6. A refusal to cooperate was based on advice from legal counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information.

8. E2.A5.1.3.2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily.

9. Title 18, Section 1001 of the United States Code provides: (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully--

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false; fictitious or fraudulent statement or entry;

shall be fined under this title or imprisoned not more than five years or both. Such an offense is classified as a Class D felony in accordance with 18

U.S.C. §3359(a); with regard to the maximum fine authorized ($250,000), see 18 U.S.C. §3571.