

DATE: February 28, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-04783

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Although the Applicant's past criminal conduct is not recent, his related mental disorder, which is currently in remission, is of security significance. On three separate occasions, in June of 1997, in October of 1998, and more recently in October of 2000, the Applicant failed to take his prescribed medications. Each failure led to psychotic episodes which required hospitalization. If he goes off his medication again, there is "a 95% likelihood" of another such episode. In light of his recent history, it is too soon to conclude that the Applicant will not again cease taking his medication, thereby becoming psychotic and a security risk. Clearance is denied.

On September 9, 2002, 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 October 4, 2002.

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 December 6, 2002. 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 December 20, 2002, and submitted nothing in reply. The case was received by the undersigned for resolution on January 24, 2003. The issues raised here are whether the Applicant's recurring mental disorder 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, and the File of Relevant Material. The Applicant is 42 years of age and is employed by a defense contractor who seeks a security clearance on behalf of the

Applicant.

Guideline I - Emotional, Mental, and Personality Disorders & Guideline J - Criminal Conduct

1.a., 1.b., and 2.a.~2.e. In **1992**, the Applicant was hospitalized for paranoid delusions (Government Exhibit (GX 6 at pages 1~2). As a result of this hospitalization he was prescribed medication (*id*). In June of **1997**, the Applicant was hospitalized with a diagnosis of acute psychosis/psychotic (GXs 7 and 12, *see also* GX 14). He had not been taking his medications (*id*).

On September 30, 1998, the Applicant was arrested for Public Intoxication (GXs 8 and 9). Although this charge was subsequently dismissed, the next day, October 1, **1998**, the Applicant was again hospitalized for an acute psychotic disorder (GX 13, *see also* GX 14). He had failed to take his medications nine months prior to this hospitalization (*id*). On October 9, 1998, the Applicant was charged with and subsequently pled guilty to Possession of a Firearm while under a restraining order (GXs 10 and 11). In part, he was ordered to stay on his prescribed medications (*id*).

In October of **2000**, the Applicant was hospitalized for a fourth time, for a condition diagnosed as schizophrenic disorder, paranoid type (GX 6 at page 2). Again, he had failed to take his medications for nine months prior to this hospitalization (*id*).

On January 3, 2002, the Applicant was given a psychiatric evaluation (GX 6). His bipolar disorder was found to be in remission. His was also found to be "without any current pattern of high-risk, irresponsible, aggressive, anti-social or emotionally unstable behavior; . . . without any current defect in his judgement or reliability . . . ; [and] has insight into the nature and severity of his underlying condition and the need for continuing psychiatric management and treatment . . ." (GX 6 at page 4). The last entry notes, however, that the Applicant "has a 95% likelihood of developing another serious episode, which might adversely affect his judgement, or reliability insofar as his ability to safeguard classified information is concerned if he were to discontinue taking his prescribed medication in the future" (*id*).

Mitigation

In his answer to the SOR, the Applicant avers that he has "no intention of discontinuing medications" (GX 3).

POLICIES

Enclosure 2 and Section E2.2. of the 1992 Directive set forth both policy factors and conditions that could raise or mitigate a security concern, and 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:

Criminal Conduct

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

2. A single serious crime or multiple lesser offenses.

Condition that could mitigate security concerns include:

1. The criminal behavior was not recent.

Emotional, Mental, and Personality Disorders

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

1. An opinion by a credentialed mental health professional that the individual has a condition . . . that may indicate a defect in judgement, reliability, or stability;
2. Information that suggests that an individual has failed to follow appropriate medical advice relation to treatment of a condition, e.g. failure to take prescribed medication.

Conditions that could mitigate security concerns include:

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 a case under Guideline I (Emotional, Mental, and Personality Disorders), 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.

An individual who suffers from a mental disorder may have a defect in judgement, reliability or stability. 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.

CONCLUSIONS

The Applicant is suffering from a mental disorder, which, in the opinion of a credentialed mental health professional, if untreated with medications is a security concern. The Applicant avers that he will not cease taking his medications, but his recent mental history indicates that a risk continues to exist. In 1992, he was diagnosed with a mental disorder and prescribed medication. In 1997, in 1998 and again in 2000, the Applicant had to be hospitalized as a result of his failure to take his medications. His last hospitalization was a little more than two years ago; and as such, in light of the Applicant's history of repeatedly not taking his medications, it is too soon to say he will not again repeat this cessation and become a clear security risk. Paragraph 2, Guideline I is thus found against the Applicant.

As to the Applicant related past criminal conduct, the September~October occurrences are distant enough in time, more

than four years ago, so as not to be of current security significance. Paragraph 1, Guideline J is therefore found for the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his mental disorder. The Applicant has thus not met the mitigating conditions of Guideline I, and of Section E2.2. of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guideline I.

FORMAL FINDINGS

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

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.

Paragraph 2: AGAINST THE APPLICANT

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