

DATE: December 19, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-05695

**DECISION OF ADMINISTRATIVE JUDGE**

**WILFORD H. ROSS**

**APPEARANCES**

**FOR GOVERNMENT**

Martin H. Mogul, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has used marijuana, cocaine and other drugs on an occasional basis through at least 1999. He has lied about his use on a questionnaire and in two sworn statements. The Applicant also has severe debt problems. Adverse inference is not overcome. Clearance is denied.

**STATEMENT OF THE CASE**

On January 24, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) 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.

The Applicant responded to the SOR in writing on April 2, 2002, and requested a hearing. The case was received by the undersigned on May 2, 2002, and a Notice of Hearing was issued on May 16, 2002.

A hearing was held on June 14, 2002, at which the Government presented seven documentary exhibits, and called one witness. Testimony was taken from the Applicant, who also submitted four hearing exhibits and three post-hearing exhibits. (Applicant's Exhibit E consists of two pages of pay stubs for the Applicant; Applicant's Exhibit F is a letter from the Internal Revenue Service dated June 14, 2002; Applicant's Exhibit G is a letter from the Department of the Treasury, Financial Management Service dated April 5, 2002.) The transcript was received on June 24, 2002.

**FINDINGS OF FACT**

The Applicant is 49, single and has a GED. He is employed by a defense contractor as an mechanical technician, and he seeks to obtain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

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

The Applicant is not a credible witness. He contradicted himself repeatedly during his testimony at the hearing, changing his story as his previous one was disproved by the Department Counsel. In addition, as discussed below, his three written statements contain conflicting information. Possibly the best evaluation of the Applicant's veracity was made by the Clinical Director at the recovery program the Applicant attended in 1995, "Much of the historical information provided in this summary should be considered as having been provided by a very questionable historian. [The Applicant] seems to pathologically fabricate situations to: (1) draw attention to himself; (2) maximize stories of people mistreating him, and (3) minimize his responsibility for events or misbehavior." (Government Exhibit 5 at 1.) This evaluation must be kept in mind in discussing all of the allegations against the Applicant, particularly those involving drug use.

1.a. The evidence concerning the extent of the Applicant's marijuana use is contradictory. In his answer and during the hearing, the Applicant denied using marijuana after 1978. (Transcript at 23.) After extensive cross-examination, the Applicant eventually admitted that he had taken a puff or two of marijuana on various occasions through 1995. (Transcript at 38-39.) In a sworn statement dated September 19, 2000, the Applicant admitted using marijuana monthly from 1974 to 1982, twice a month from 1982 until 1987-1988, and once every four to six months from 1987-1988 until July 1998. The Applicant also admitted last smoking marijuana in September 1999. (Government Exhibit 2 at 2.) The Applicant testified that he got angry at this interviewer and basically said whatever it took to satisfy this person. (Transcript at 25, 56-57.) The Applicant also gave two other sworn statements (Government Exhibit 3 (June 27, 2000) at 3; Government Exhibit 4 (June 21, 2000) at 5-6), and information to a recovery program (Government Exhibit 5 (March 21, 1995) at 5.), each of which shows different amounts and dates of use.

Based on my analysis of all the available evidence, I find that the Applicant has used marijuana on an occasional basis from 1974 until at least 1999. Given his credibility problems, I cannot find that the Applicant has stopped using marijuana within the recent past.

1.b. Concerning his use of hashish, the Applicant said, "I first used hashish in 1972 while I was in the US Army. I estimate that I smoked hashish almost daily from 1972 to Sep 74, except for periods when I was on a fire mission." (Government Exhibit 2 at 3.) In his testimony the Applicant admitted to using hashish twice. (Transcript at 46-49.) Based on his credibility problems, I do not believe the Applicant's testimony and find the statement in Government Exhibit 2 to probably be a more accurate description of his hashish use.

1.c. The Applicant admits to using LSD on one occasion in 1970 on page 4 of Government Exhibit 2. In his testimony, the Applicant says that he was told the item was LSD, but he does not believe it was. (Transcript at 49-50.) Regardless of whether the item really was LSD, the Applicant admits taking it believing it to have been LSD.

1.d. The Applicant admits using diet pills for eight weeks in 1970. (Transcript at 50-51.) In Government Exhibit 2 at page 5 the Applicant admits taking some pills called "White Crosses." There is insufficient evidence to determine that the Applicant knowingly used amphetamines as alleged. This subparagraph is found for the Applicant.

1.e. The evidence is contradictory regarding the Applicant's use of cocaine. In his extensive statement of September 19, 2000, the Applicant describes three periods of cocaine use. During the first period, between 1972 and 1974, the Applicant used cocaine about six times. Later, between 1985 and 1987-88, the Applicant used cocaine approximately 24 times. The final period was from November-December 1994 to January 1995. During this last period he used cocaine twice weekly until, because of a work-related accident, he received a drug test and came up positive for cocaine. He then used cocaine twice more during treatment. (Government Exhibit 2 at 3-4.)

The Applicant's testimony on this point was that he used cocaine a grand total of three times. The first time was when he

came up positive at work and the other times were before he came up positive on two separate drug tests at his rehabilitation program. He completely denied any other use of cocaine at any time. (Transcript at 67-76.) In Government Exhibit 3 at 3 the Applicant stated that he used cocaine once, while in high school. The Applicant totally denied any cocaine use in Government Exhibit 4 at 4-5. While it is impossible to know with any certainty how much cocaine the Applicant used, he certainly used it more than three times.

1.f. The Applicant admitted that he used heroin on a one time basis in the 1970s as a "trial deal." (Transcript at 52-53.)

1.g. The Applicant denied using crystal methamphetamine (crank). (Transcript at 53-54.) In his sworn statement, and at his treatment program, the Applicant admits using crank once. (Government Exhibit 2 at 4, Government Exhibit 5 at 5.) His testimony on this allegation that he did not use crystal methamphetamine is rejected as not being credible or worthy of belief.

1.h. The Applicant admitted eating some mushrooms but denied that he knew they were hallucinogenic. (Transcript at 57-58.) In his sworn statement the Applicant admits eating hallucinogenic mushrooms. (Government Exhibit 2 at 5.) Given the difficulty of knowing whether any particular mushroom is hallucinogenic or not, this subparagraph is found for the Applicant.

1.i. The Applicant admitted being arrested for Possession of Marijuana in 1978. He testified that he was in a car belonging to others, who actually owned the marijuana, and that he was just there. (Transcript at 59-60.)

1.j. The Applicant denied purchasing marijuana in his testimony, which is directly contradicted by Government Exhibit 2. (Transcript at 76-77.) On this point as well, the Applicant's denial is simply not credible.

1.k. In the mid-1980s, the Applicant admits that his wife "planted" some marijuana seeds. In Government Exhibit 2 at 5 he states that he pulled up the plants and smoked the marijuana. In his testimony he states that his wife and her brother pulled up the plants and smoked the marijuana, and that he got mad because they did it in front of his children. (Transcript at 81-84.) Both stories are reasonable and credible, and there is insufficient evidence for me to choose between them. This subparagraph is found for the Applicant.

1.l. In Government Exhibit 2 at 3, the Applicant admits to selling marijuana. In his testimony, the Applicant completely denies selling marijuana. (Transcript at 84.) The Applicant's denial on this point is also not credible.

1.m. The Applicant admits purchasing cocaine on one occasion in 1994-95. There is some dispute as to whether he purchased one or two pills for \$5 or \$10. (Transcript at 85-86.) Under the particular circumstances of this case that difference is not material.

1.n. The Applicant did receive treatment for cocaine abuse in 1995. He was evaluated by the clinical director of the treatment program, a Ph.D. who is a LMSW. This treatment was the result of the positive drug test for cocaine described above. The Applicant had two positive drug tests for cocaine while in treatment. He first attempted to explain these test results as a "set-up" to get him fired. (Government Exhibit 4 at 5.) The Applicant was discharged from the program and reported to his employer as a treatment dropout. (Government Exhibit 5 at 2-3.)

1.o. As a result of being a treatment dropout from the above program, the Applicant was discharged from his employer.

Paragraph 2 (Guideline G - Alcohol abuse). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he abuses intoxicants.

2.a. and 2.b. The Applicant began drinking alcohol when he joined the service. He has never had any alcohol related arrests. Before 1995, the Applicant admits to occasionally drinking to the point of intoxication. In fact, the treatment program he went to in 1995 diagnosed him with "Alcohol Dependence." (Government Exhibit 5 at 1.)

The Applicant testified that he did use alcohol to help him handle other problems in that time frame. (Transcript at 90-93.) After his treatment, he would abstain from alcohol for a period of time, than go back to drinking again. The Applicant admits that he still drinks occasionally. The most he has drunk in the recent past is five or six beers at a

company function sometime in 2000. The Applicant believes that he does not have a continuing alcohol problem and that he controls his drinking within limits. (Transcript at 93-99.)

Paragraph 3 (Guideline F - Financial considerations). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to procure funds.

3.a. The Applicant states that this is a debt incurred by his ex-wife. He admits that it is his debt for \$590. He has not made any payments to this creditor, but intends to start paying once he pays off some other debts. (Transcript at 99-101.)

3.b. The Applicant has paid this department store debt in the amount of \$467. (Applicant's Exhibit A.)

3.c. The Applicant has paid this debt in the amount of \$203. (Applicant's Exhibit C.)

3.d. The Applicant testified that this \$759 debt actually belonged to his ex-wife. (Transcript at 105-111.) He further testified that he is trying to resolve this situation with his ex-wife, but that he has no current plans to pay this debt. The debt is shown on his credit report. (Government Exhibit 6.)

3.e. The Applicant has not paid this \$73 debt to a hospital. (Transcript at 111.)

3.f. The Applicant has not paid this \$478 debt to a hospital. (Transcript at 111-112.)

3.g. The Applicant admits that he owes an arrearage to his state for past due child support payments. The Applicant is uncertain what the current amount is, but the original arrearage was \$7,701. The state has been taking \$100 out of his pay every month to pay the arrearage since 2000. In addition, his income tax refund is being forwarded to the state, and that is also reducing his arrearage. (Transcript at 112-120; Government Exhibit 7; Applicant's Exhibits D, E and G.)

3.h. The Applicant testified that, at his request, the state issued an order to his employer requiring his employer to withhold and remit the child support arrearage discussed in 3.g., above. (Transcript at 120-123, Government Exhibit 7.)

3.i. According to the Internal Revenue Service, the Applicant does not currently owe any money for past due taxes. (Applicant's Exhibit F.)

3.j. The Applicant is able to maintain his payments on his current debt. When he has money left over he is trying to pay his past due indebtedness. He does not consistently have \$181 left over every month.

Paragraph 4 (Guideline E - Personal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

4.a. On September 15, 1999, the Applicant completed an official DoD questionnaire in which he stated that he had not used marijuana or cocaine in the previous seven years. (Government Exhibit 1, question 27.) This statement was a false answer to a material question pertaining to the Applicant's former involvement with illegal substances.

The Applicant stated, "I did indicate on a draft copy of my security clearance questionnaire that I had used a little marijuana in my past. I did not detail all of my drug usage or involvement. I did not list or reflect any marijuana (or illegal drug usage) for the past seven years. This explains why there is a 'no' answer on questions concerning illegal drug usage or involvement in the last seven years." (Government Exhibit 2 at 6, Transcript at 132-135.)

4.b. On the same questionnaire the Applicant also stated that he had never been charged or arrested of any offense related to alcohol or drugs. (Government Exhibit 1, question 24 .) This statement was also a false statement to a material question pertaining to the Applicant's arrest record.

4.c. The Applicant was subsequently interviewed by a Special Agent of the Defense Security Service (DSS) on June 21,

2000. (Government Exhibit 4.) In that first interview the Applicant denied any illegal drug use after 1992. He also stated that his use of cocaine in 1994 was accidental. As set forth above, this information was false.

4.d. The DSS agent subsequently received information from the Applicant's therapist that the Applicant had admitted using marijuana after 1992 (Government Exhibit 5). The Applicant was reinterviewed on June 29, 2000, and after being confronted with this knowledge, admitted his additional marijuana use. He continued to deny cocaine use. (Government Exhibit 3.) As set forth above, this information also was false.

The Applicant described a much more extensive drug history to a second DSS agent on September 19, 2000. (Government Exhibit 2.) The Applicant stated that he had previously falsified his drug information because, "I was also concerned that my truthful answers would or could have an adverse impact on my security clearance and/or my job." (Government Exhibit at 6; Transcript at 134-135, 138.)

## POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

### Guideline H (Drug involvement)

Conditions that could raise a security concern:

- (1) any drug abuse;<sup>(1)</sup>
- (2) illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution;
- (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.

Conditions that could mitigate security concerns:

(None of the stated conditions have application in this case.)

### Guideline G (Alcohol consumption)

Condition that could raise a security concern:

- (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.

Conditions that could mitigate security concerns:

(None of the stated conditions have application in this case.)

### Guideline F (Financial considerations)

Conditions that could raise a security concern:

- (1) a history of not meeting financial obligations;

(3) inability or unwillingness to satisfy debts;

Condition that could mitigate security concerns:

(6) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Guideline E (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, 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;

(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;

Conditions that could mitigate security concerns:

(None of the stated conditions have application in this case.)

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 factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- 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 of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

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 a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of drug abuse, alcohol abuse falsification and past due indebtedness that demonstrate poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the

seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge 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. 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

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 granting 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 or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has used illegal drugs (Guideline H); that he has been evaluated with alcohol abuse (Guideline G); that he has not paid his debts in a timely fashion (Guideline F); and that he intentionally made false material statements to DoD (Guideline E).

The Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him, except in part. Under Paragraph 1 (Guideline H), as set forth above, subparagraphs 1.d., 1.h. and 1.k., are found for the Applicant.

The evidence concerning the Applicant's alcohol abuse is mixed. The record to support the diagnosis of alcohol abuse found in Government Exhibit 5 is very sparse. The Applicant has drunk to excess on occasion but, based on the available evidence, I cannot find that he suffers from alcohol abuse as alleged in the SOR. Paragraph 2 and its subparagraphs are found for the Applicant.

The Applicant has completely paid off three of the debts in the SOR, and is making payments on the fourth, his child support. Accordingly, subparagraphs 3.b., 3.c., 3.g. and 3.i. are found for the Applicant. However, there are four additional debts which he has not paid and which he does not have any current plans to pay. While he has made a good start, in my opinion it is not enough. Subparagraphs 3.a., 3.d., 3.e., 3.f., 3.h. and 3.j, along with Paragraph 3, are found against the Applicant.

It is impossible to know the true nature and extent of the Applicant's drug abuse. His marijuana use continued until at least 1999. His history of cocaine abuse, especially while on the job and while in treatment, is very disturbing. The long extent of Applicant's drug use, coupled with his lying about it three times, and possibly at the hearing itself, persuade me that this Applicant has not met his burden in showing he is no longer a drug abuser. Accordingly, Guideline H is found against the Applicant.

The Government relies heavily upon the integrity and honesty of clearance holders, and it is a negative factor for security clearance purposes where an Applicant has deliberately provided false information about material aspects of his or her personal background. In this case, especially, the Applicant has repeatedly lied about the true nature and extent of his drug abuse. Guideline E is found against the Applicant.

On balance, it is concluded that the Applicant has failed to overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the conclusionary allegations expressed in Paragraphs 1, 3 and 4 of the Government's Statement of Reasons. As set forth above, Paragraph 2 is found for the Applicant.

### 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: Against the Applicant.

Subparagraph 1.a.: Against the Applicant.

Subparagraph 1.b.: Against the Applicant.

Subparagraph 1.c.: Against the Applicant.

Subparagraph 1.d.: For 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.

Subparagraph 1.k.: For the Applicant.

Subparagraph 1.l.: Against the Applicant.

Subparagraph 1.m.: Against the Applicant.

Subparagraph 1.n.: Against the Applicant.

Subparagraph 1.o.: Against the Applicant.

Paragraph 2: For the Applicant.

Subparagraph 2.a.: For the Applicant.

Subparagraph 2.b.: For the Applicant.

Paragraph 3: Against the Applicant.

Subparagraph 3.a.: Against the Applicant.

Subparagraph 3.b.: For the Applicant.

Subparagraph 3.c.: For the Applicant.

Subparagraph 3.d.: Against the Applicant.

Subparagraph 3.e.: Against the Applicant.

Subparagraph 3.f.: Against the Applicant.

Subparagraph 3.g.: For the Applicant.

Subparagraph 3.h.: For the Applicant.



Subparagraph 3.i.: For the Applicant.

Subparagraph 3.j.: Against the Applicant.

Paragraph 4: Against the Applicant.

Subparagraph 4.a.: Against the Applicant.

Subparagraph 4.b.: Against the Applicant.

Subparagraph 4.c.: Against the Applicant.

Subparagraph 4.d.: 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.

Wilford H. Ross

Administrative Judge

1. Under the provisions of 10 U.S.C. 986, any person who is an unlawful user of, or is addicted to, a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), may not be granted or have renewed their access to classified information.