

DATE: May 8, 2002

In Re:

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SSN: -----

Applicant for Security Clearance

CR Case No. 01-06852

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Martin H. Mogul, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Although the Applicant's drug involvement is not recent, having ended more than six years ago, he was less than candid about his past drug usage when he executed his Security Clearance Application in August of 1998. Clearance is denied.

**STATEMENT OF THE CASE**

On January 8, 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 January 28, 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 aterial (FORM) on March 8, 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 March 22, 2002, and Applicant's reply was received on or about April 29, 2002. The case was received by the undersigned for resolution on April 30, 2002. The issues raised here are whether the Applicant's admitted past drug involvement and related personal 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 46 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant.

## Guideline H - Drug Involvement

1.a.~1.c. The Applicant used marijuana, from about 1971 or 1972 until about 1995 (Government Exhibit (GX) 5 at pages 1~2). During this time frame, he also used cocaine from about 1979 or 1980 until 1992 or 1993 (GX 5 at page 2). The Applicant purchased cocaine on numerous occasions, his "total yearly expenditure" was "between \$600.00 and \$800.00" for the drug (GX 5 at page 3).

The Applicant describes his marijuana abuse in the following terms:

. . . I used marijuana from approximately 1971 or 1972 for about a year and a half on a once to twice weekly basis. . . . From about 1972 or 1973 until about 1977 I stopped using any kind of illegal drugs.

In about 1977 or 1978 until about 1980/1981 I resumed using marijuana at approximately the same rate as before and the same frequency. My usage changed in about 1980 or 1981 to once or twice yearly until approximately 1995 . . . (GX 5 at pages 1~2).

As to his cocaine abuse, the Applicant averred the following:

During most of the same period I used cocaine. I usually snorted the cocaine, approximately 80% of the time. However, I did smoke and free base about 20% of the time. I didn't initially use cocaine until 1979 or 1980. The cocaine usage didn't necessarily coincide with the marijuana usage. Typically, when I used cocaine I did not use marijuana on the same occasion. However the time sequence of non use [was] parallel. I stopped using cocaine in approximately 1992 or 1993 . . . (GX 5 at page 2).

As to any future drug abuse, the Applicant avers credibly:

I stopped using drugs because I didn't like the way they made me feel and all the physical after affects. I have never received any counseling or medical treatment for my use of drugs. As far as I know, no one ever thought I needed counseling. I have no intention to ever use any kind of illegal substance in the future (GX 5 at page 3).

## Guideline E - Personal Conduct

2.a. In answering question 27 on his August 1998 Security Clearance Application (SCA), the Applicant knowingly and wilfully failed to disclose any of his past drug abuse (GX 4 at page 8). The posited question asks, in part, "Since the age of 16 or in the last 7 years . . . have you illegally used any controlled substance, for example, marijuana, cocaine . . . (*id*). The Applicant responded with a simple "No" (*ibid*).

## Mitigation

The considers "himself a patriot," and reiterates "I will never abuse drugs ever again" (Applicant's Answer at pages 1 and 2).

Considering all of the evidence, and in light of the fact that the Applicant was clearly less than candid about his past drug involvement, the Applicant bears a heavy burden of persuasion in demonstrating his suitability for a security clearance access.

## **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:

## Drug Involvement

### Conditions that could raise a security concern:

- (1) any drug abuse (drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction);
- (2) illegal drug possession, including . . . purchase . . . ;

### Conditions that could mitigate security concerns:

- (1) The drug involvement was not recent;
- (3) A demonstrated intent not to abuse any drugs in the future;

## Personal Conduct

### Condition 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 . . . ;

### 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 and seriousness of the conduct and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age 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 H (drug involvement), and Guideline E (personal 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; and improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. 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's drug involvement extends over a period of about 25 years, from about 1971 until about 1995. It ended more than six years ago, however; and as such, is not recent, as required by the first mitigating condition under Drug Involvement. The Applicant also avers credibly, both in his sworn statement and in his Answer, that he will "not abuse any drugs in the future," the third mitigating condition. I am therefore convinced that the Applicant's past drug involvement is not of present security significance

The same, however, can not be said about the Applicant's more recent personal conduct. In August of 1998, when asked about his past drug involvement, he denied there was any. This is a falsehood. It was not until nearly a year and a half later that the Applicant started divulge his drug involvement in a sworn statement (GX 6), and it was not until a further nine month later that he divulged his true involvement in a subsequent sworn statement (GX 5). This lack of candor is clearly of security significance; and as such, Guideline E is found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his personal conduct. The Applicant has thus not met the mitigating conditions of Guideline E, and of Section E.2.2. of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guideline E.

### **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.
- c. For 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