

DATE: December 27, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-11484

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's multiple falsifications suggested that she could not be relied upon to state the truth if the truth presented potential adverse consequences to her personal interest. Her drug use was not mitigated where she had used drugs while possessing a security clearance and presented insufficient evidence to demonstrate an intent to not use drugs in the future. Clearance denied.

STATEMENT OF THE CASE

On 25 January 2002, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 4 April 2002, Applicant answered the SOR and requested an administrative decision on the record. Applicant did not respond to the Government's initial File of Relevant Material (FORM)--issued 15 April 2002, which Applicant received 13 May 2002. While further processing was pending, Applicant's employer administratively terminated Applicant's clearance, effective 12 June 2002.⁽²⁾ However, the case was later reopened, ostensibly because Applicant was now with a new employer.⁽³⁾ The FORM was reissued, unchanged, on 6 November 2002. On 6 December 2002, Applicant responded to the FORM; the record in this case closed 18 December 2002, the day Department Counsel indicated no objection to the response. The case was assigned to me on 20 December 2002, and received by me the same day, to determine whether clearance should be granted, continued, denied, or revoked.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR; accordingly, I incorporate her admissions as findings of fact.

Applicant--a 40-year old employee of a defense contractor--seeks to retain access to classified information that she has held since at least March 2000.⁽⁴⁾

On 2 February 2000, Applicant falsified a Security Clearance Application (SCA)(SF-86)(Item 5) when she answered "no" to a question which required her to disclose any use of illegal drugs within the last seven years (question 27). On 25 September 2000 Applicant repeated her falsification of her drug abuse history when she executed a sworn statement before an agent of the Defense Security Service (DSS), as follows:⁽⁵⁾

. . . I had never used marijuana or any other illegal drugs in my life and had no intentions of using the drug I was carrying in that small wooden box. . . Although a friend of mine did give me that small wooden box containing marijuana, I have never been around her while she was using the drug. I have never used marijuana or any other illegal drugs in my life, have otherwise never possessed illegal drugs, and have no future intentions of using or otherwise being involved with illegal drugs.

On or about 25 January 2001, Applicant continued to falsify her drug abuse history during an interview with a different special agent of the DSS (a polygrapher). She first asserted that she had used liquid speed once in 1977 and marijuana once in 1980, then later asserted that she had not used marijuana since 1988. In fact, Applicant first used marijuana in 1978, smoking it about 50 times between 1977 and 1980. She used liquid speed a few times between 1977 and 1980 while a military dependent living in Germany, where the drug is available over-the-counter.⁽⁶⁾ She used marijuana on an occasional basis between 1980 and approximately 20 April 1998, when she had the marijuana confiscated at the airport.⁽⁷⁾ She has not used marijuana since then. She states that she will not use drugs in the future.

Although Applicant categorically admitted the SOR allegations without comment, her cover letter minimizes her drug abuse history, and attempts to distance herself from her sworn statements asserting in both instances that the agents ignored her obvious and stated discomfort and pain related to two neck surgeries, one sometime before her first interview in September 2000, the other approximately six weeks after her September 2000 interview. She asserts that the first agent asked her only about her drug use since high school, but then asked her to sign a statement covering her whole life--a statement she claims she read very quickly and incompletely in her haste to get the interview over.

I find Applicant's explanations not credible. Applicant's September 2000 statement specifically denies any drug abuse in the context of her having been stopped with marijuana in an airport in April 1998 and having the drug confiscated. Applicant clearly presents herself as someone who is mystified that her friend--"an occasional use of marijuana"--gave Applicant a small wooden box to take on the plane. Indeed, Applicant's first categorical statement that "I had never used marijuana or any other illegal drugs in my life and had 'no intentions of using' the drug I was carrying in that small wooden box" had a pen and ink correction--initialed by Applicant--inserting 'no intentions of using' in place of the original language, 'would not have used' the drug. . .

In a similar fashion, Applicant's second statement records an incident of her using a prescription muscle relaxer given to her by a co-worker when her back started giving her trouble while on a business trip (not prescribed for Applicant, but ostensibly used correctly for her back pain in the broader sense). However, the claimed indifference of the polygrapher to Applicant's stated pain during the interview--if true--would constitute a violation of Government policy, as well as the practical tainting of any polygraph results. Applicant provides no corroboration of her claim of misconduct, and I will not presume any.

Applicant's December response to the FORM is essentially a plea that I retain her clearance notwithstanding her admitted falsifications, which she now attributes to her fear about how admitting her past drug use would effect her current job. The record otherwise contains no information on her character or work performance.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. 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, as the guidelines reflect consideration of those factors of seriousness,

recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

PERSONAL CONDUCT (GUIDELINE E)

E2A5.1.1. **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. . .

E2. A5.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A5.1.2.2. 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, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, . . . in connection with a personnel security or trustworthiness determination;

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

DRUG INVOLVEMENT (GUIDELINE H)

E2.A8.1.1. The Concern:

E2.A8.1.1.1. Improper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

E2.A8.1.1.2. Drugs are defined as mood and behavior-altering substances.

E2.A8.1.1.2.1. Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants and hallucinogens); and

E2.A8.1.1.2.2. Inhalants and other similar substances,

E2.A8.1.1.3. Drug abuse is the illegal use of a drug or use of a legal drug in a manner

that deviates from approved medical direction.

E2.A8.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A8.1.2.1. Any drug abuse (see above definition);

E2.A8.1.2.2. Illegal drug possession. . . ;

E2.A8.1.2.2. . . . Recent drug involvement, especially following the granting of a security clearance . . . will almost invariably result in an unfavorable determination.

E2.A8.1.3. Conditions that could mitigate security concerns include:

E2.A8.1.3.1. The drug involvement was not recent;

E2.A8.1.3.2. The drug involvement was an isolated or aberrational event;

E2.A8.1.3.3. A demonstrated intent not to abuse any drugs in the future.

CRIMINAL CONDUCT (GUIDELINE J)

E2.A10.1.1. A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

E2.A10.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A10.1.2.1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;

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

E2.A10.1.3. Conditions that could mitigate security concerns include:

E2.A10.1.3.1. The criminal behavior was not recent;

E2.A10.1.3.3. . . . the factors leading to the violation are not likely to recur;

E2.A10.1.3.6. There is clear evidence of rehabilitation.

Burden of Proof

Initially, the Government must prove controverted facts alleged in the SOR. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation, or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where 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 that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the 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."

CONCLUSIONS

The Government has established its case under Guideline E. The information sought by the Government on the clearance application and during the two subject interviews was relevant and material to the Government's investigation of the Applicant's fitness for access to classified information, and the Applicant knowingly and wilfully falsified that information. Applicant categorically denied any drug use in her first statement, and appears to have not disclosed her complete drug history during the pre-test phase of her polygraph. Her failure to fully disclose the her drug abuse history until the post-test phase of the polygraph suggests that she cannot be relied upon to speak the truth if the truth presents possible adverse consequences for her own interests. She knew the answers she provided were false; and indeed she knew the answers had to be false for her to get what she wanted--a security clearance.⁽⁸⁾ At no time before her final discussions with the polygrapher did Applicant make any effort to fully disclose the details of her drug abuse, much less a prompt, good-faith effort. I resolve guideline E. against the Applicant.

The Government has established its case under guideline H and I find the conduct not mitigated. Although Applicant's drug use from 1992 to 1998 does not appear to be extensive, she appears to have used drugs during times when she had access to classified information, a situation which will almost invariably call for revocation of her clearance. While an argument can be made that her last use in April 1998 is not recent, overall her drug use cannot be considered isolated or aberrational. Nor, under the circumstances of this case, can I consider Applicant to have demonstrated an intent to not use drugs in the future. While there is no record evidence to suggest that Applicant has used drugs after the last claimed use in 1998, Applicant's uncorroborated claims cannot be given full weight, given her credibility and falsification

problems. I resolve guideline H. for Applicant.

The Government has established its case under Guideline J; however, I find the drug incident and the drug abuse to be mitigated. Although the criminal behavior was recent, and not strictly speaking an isolated incident, I conclude that this conduct has little remaining security significance. However, Applicant's multiple falsifications remain disqualifying. Applicant's knowing falsifications to an agency of the federal government on matters within that agency's jurisdiction clearly violate 18 U.S.C. §1001. The falsifications had the potential to influence the course of the background investigation--in areas of legitimate concern to the Government--and indeed appeared to lengthen the investigation. I resolve guideline J. against the Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline E: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Paragraph 2. Guideline H: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Paragraph 3. Guideline J: AGAINST THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: 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 Applicant.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated 2 January 1992--amended by Change 3 dated 16 February 1996 and by Change 4 dated 20 April 1999 (Directive).
2. The termination form indicated that the Government client had determined that Applicant's position no longer required a clearance.
3. The "screen shot" of the clearance database does not reflect the date this occurred. Further, although the hand-written notation reflects Applicant being at a new employer, routine correspondence contained in the FORM reflects that Applicant is employed at the same employer, albeit with a new mailing address.
4. Although Applicant's most recent clearance application indicates she was previously granted clearances in November 1995 and April 1992. The record does not state whether her access has been continuous since 1992.

5. Applicant was apparently being interviewed about an April 1998 incident at a local airport when law enforcement officials confiscated a small amount of marijuana which had been given to Applicant by a friend, and Applicant's omission of this incident from her SCA. Applicant stated she had omitted the incident because she had been placed in a pre-trial diversion program--which she completed--and her attorney advised her she would have no record.

6. But, as acknowledged by Applicant, still illegal for Americans stationed in Germany.

7. The SOR allegations which Applicant admitted contain the essence of this drug abuse history, as well as Applicant's admission to giving false information during the April 2001 interview (presumably a pre-test interview and a post-test interview). Applicant's sworn statement on 25 April 2001 (Item 6) contains only a portion of the abuse history admitted by Applicant.

8. Applicant admitted that she falsified her clearance application and subject interviews in order to keep her job, and by extension, her clearance.