

DATE: August 1, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-13172

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant used cocaine, and marijuana to a lesser extent and shorter duration, over a period of 22 years ending in January of 2001, to the point of acute and chronic cocaine dependency. She was also less than candid with the Government as to her past drug abuse on two separate occasions. Clearance is denied.

STATEMENT OF THE CASE

On March 6, 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 the 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 March 26, 2002.

The case was received by the undersigned on June 5, 2002. A notice of hearing was issued on June 17, 2002, and the case was heard on July 10, 2002. The Government submitted documentary evidence, and called one witness to testify. Testimony was taken from the Applicant. The transcript was received on July 18, 2002. The issues raised here are whether the Applicant's admitted drug abuse, alleged alcohol abuse, 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 documents and the live testimony. The Applicant is 47 years of age, has a high school education, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant.

Guideline H - Drug Involvement & Guideline E - Personal Conduct

1.a.~1.d. The Applicant used cocaine, with varying frequency, at times daily and to the point of dependency, from about 1979 until her last usage in January of 2001 (Transcript (TR) at page 54 line 13 to page 58 line 4, at page 65 line 5 to page 66 line 3, and Government Exhibit (GX) 1 at page 2). She had been granted a security clearance in 1993, and used cocaine to the point of dependency subsequent to this grant (GX 4 at page 9, and GX 6 at page 8). The Applicant also purchased cocaine on numerous occasions, spending about \$50 each time she snorted the drug (GX 4 at page 2). From May 28 to June 7, 1999, the Applicant was treated for her "Acute and chronic cocaine dependency," but used the drug on at least one occasion subsequent to her discharge from treatment (TR at page 65 line 5 to page 66 line 3, and GX 4).

1.e. The Applicant used marijuana, with varying frequency, from about 1975 until her last usage in 1981 (TR at page 51 line 24 to page 52 line 21, and GX 1 at page 2).

3.a. and 3.b. In answering questions 22.a. and 22.b. on her **July 17, 1992**, Personnel Security Questionnaire (PSQ), the Applicant knowingly and wilfully failed to disclose any of her past drug involvement (TR at page 30 line 23 to page 33 line 8, and GX 7 at page 4). She avers, in part, "I didn't want anyone to know. It was something I was embarrassed about, and I knew it was illegal" (TR at page 33 lines 6~8).

3.c. and 3.d. In answering questions 27 and 28 on her **January 6, 1998**, Security Clearance Application (SCA), the Applicant again knowingly and wilfully failed to disclose any of her past drug involvement (TR at page 33 line 9 to page 37 line 3, at page 41 lines 13~19, and GX 6 at page 7). She explains her "No" answers in the following terms:

From the very beginning on any clearance papers I filled out for . . . [her employer], I said no, I have not used illegal drugs because . . . I knew it was illegal, for one. . . and I wanted my clearance, and I didn't want that to prevent me from getting [my] clearance (TR at page 35 lines 18~24).

Guideline G - Alcohol Consumption & Guideline E - Personal Conduct

2.a.~2.c. and 3.e. The Applicant consumed alcohol, on average, "once a month" (GX 3 at page 3). She drank up to six drinks at a sitting "for a good time," but does not think she has an alcohol problem (TR at page 66 line 4 to page 67 line 11, and GX 3 at page 3). She has never been told she is an alcoholic, and has no alcohol related incidents (TR at page 66 line 4 to page 67 line 11). While in treatment for her cocaine dependency, the Appellant was also diagnosed as suffering from "**possible** alcoholism" (GX 4 at page 9, emphasis supplied). The Applicant only became aware of this "possible" diagnosis during the investigation that led to the issuance of the SOR (TR at page 64 lines 1~11). When she executed her January 1998 SCA, the Applicant was unaware of this diagnosis, as the focus of her treatment had been her cocaine abuse (TR at page 58 line 25 to page 59 line 11). When the Applicant responded to the SCA's question 30 as to "any alcohol-related treatment or counseling," she answered "No" truthfully, as she was unaware that her treatment also encompassed the possibility of alcoholism (TR at page 64 lines 12~25).

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;

2. Illegal drug possession, including . . . purchase . . . ;
3. Diagnosis by a credentialed medical professional . . . of drug dependence;

Conditions that could mitigate security concerns:

None.

Alcohol Consumption

Conditions that could raise a security concern:

None.

Personal Conduct

Condition that could raise a security concern:

3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator . . . in connection with a personnel security . . . determination;

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 that are speculative or conjectural in nature.

The Government must make out a case under Guidelines H (drug involvement), G (alcohol consumption), and 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.

The improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. Unacceptable personal conduct is conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations. 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, there then exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

CONCLUSIONS

The Applicant used drugs, particularly cocaine to the point of addiction, over a period of about 22 years. Although she last used this illegal substance about 18 months ago, it is too soon, in light of her "acute and chronic" dependency, to say that her past drug abuse is not of present security significance. The Applicant was also less than candid with the Government as to her past drug involvement on two separate occasions. The first time was on her July 17, 1992, PSQ. Mitigating condition 3 under Personal Conduct recognizes that an individual can make a "prompt, good-faith efforts to correct the falsification." Such is clearly not the case here. The Applicant simply continued her deceptive ruse, five and a half years later when she executed her January 6, 1998, SCA. This repeated personal indiscretion is also of security significance. Both Guidelines H and E are therefore found against the Applicant.

Her alleged alcohol abuse is a different matter, however. There is little, if any, evidence that the Applicant has a problem with the consumption of alcohol. The diagnosis cited by the Government is only a "possible" diagnosis. Furthermore, there is absolutely no evidence of any alcohol related incidents involving the Applicant. She does not believe she has a problem with alcohol, and her assessment is supported by the evidence. Her problem was one of cocaine dependency, not alcoholism. She was not even aware of her ill defined diagnosis vis-a-vis alcohol until the commencement of her current security clearance investigation. Her response to question 30 on her 1998 SCA was therefore a truthful response, as she was not aware of any alcohol-related treatment. Guideline G is therefore found in the Applicant's favor.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding her drug involvement and related personal conduct. The Applicant has thus not met the mitigating conditions of Guidelines E and H, and of Section E.2.2. of the Directive. Accordingly, she has not met her ultimate burden of persuasion under Guideline E and H.

FORMAL FINDINGS

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

Paragraph 1: AGAINST THE APPLICANT

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

Paragraph 2: FOR THE APPLICANT

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

Paragraph 3: AGAINST THE APPLICANT

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