

DATE: February 12, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-21460

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Marc Curry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's falsification of his drug abuse history on his 1994 security clearance application and during a 1999 subject interview suggests that he can not be relied upon to speak the truth if the truth presented potential adverse consequences to his personal interest. Applicant only disclosed the full extent of his drug abuse after being confronted by the Defense Security Service during a subject interview in 2001. Clearance denied.

STATEMENT OF THE CASE

On 13 November 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 11 December 2002, Applicant answered the SOR and requested a hearing. The case was assigned to me on 8 January 2003, and received by me the same day. On 10 January 2003, I set the case for hearing and issued a Notice of Hearing 13 January 2003 for a hearing on 28 January 2003.

At the hearing, the Government presented four exhibits--admitted without objection--and no witnesses; Applicant presented no exhibits and his own testimony. DOHA received the transcript on 5 February 2003.

FINDINGS OF FACT

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

Applicant--a 44-year old employee of a defense contractor--seeks upgraded access to classified information. He has had a government-issued clearance since 1994; before that he had a company-granted confidential clearance.

On 2 February 1994, Applicant completed a National Agency Questionnaire (NAQ)(DD Form 398-2)(G.E. 4)⁽²⁾ on which he truthfully answered "yes" to a question that required him to disclose if he had ever used any illegal drug

(question 20.a.) and "yes" to a question that required him to disclose if he had ever purchased any illegal drug (question 20.b.). He disclosed that he had used marijuana "sporadically" from May 1976 to June 1982 and had purchased personal-use amounts of marijuana during the same period. He stated he had no intent to use marijuana in the future. He was not interviewed as part of this background investigation.⁽³⁾ Based on his answers on the NAQ, he received his security clearance later in 1994.

On 7 June 1999, Applicant executed a Security Clearance Application (SCA)(SF 86)(G.E. 1) because his company nominated him for an upgraded level of clearance. Applicant truthfully answered "no" to the pertinent drug questions, which in this version of clearance applications only required Applicant to disclose drug use and purchases within the last seven years (unless the drug use occurred while in a cleared status). On 13 October 1999, Applicant was interviewed by an agent of the Defense Security Service (DSS). He acknowledged his past use and purchase of marijuana to June 1982, but denied any illegal drug use after that date.

Not until he was confronted by the DSS during an interview on 10 April 2001 (G.E 3) did Applicant finally disclose the full extent of his past drug use: he had use cocaine and crank (methamphetamine) at times weekly from the mid 1980s to at least 1990. He had also purchased approximately \$100.00 of cocaine and crank each about eight times yearly during this period. He stated he did not disclose this drug use on his 1999 SCA or during the 1999 interview because the drug use occurred over seven years before, at a time he did not have a security clearance.

However, on 24 July 2002, Applicant acknowledged that he deliberately omitted his abuse of cocaine and crank from his 1994 NAQ because he feared it would adversely affect his security clearance. He still maintained that he omitted the drug abuse from his 1999 SCA because it was outside the scope of the question. He also speculated that his former spouse provided DSS with the information about this drug use that formed the basis of the confrontation in April 2001.

At the hearing, Applicant acknowledged his past falsifications, his fear for his security clearance, and the fact that he only disclosed the full extent of his drug use when confronted by the DSS. He also acknowledged that he did not disclose the drug use when given the opportunity during the 1999 subject interview, but instead repeated his earlier falsifications. He also described his past abuse of cocaine and crank as more serious, with his drug purchases progressing from \$300.00-400.00 per year to approximately \$1,500.00 per year. He was remorseful for his falsifications.

The record contains no evidence of Applicant's work performance or character.

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 E2.2.1. 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.

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:

None.

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 and the Applicant has not mitigated the conduct. Applicant deliberately withheld the full extent of his drug abuse--drug abuse involving more serious drugs, more frequent use of illegal drugs, and more recent abuse of illegal drugs than he disclosed on his clearance application in 1994. He believed he had to falsify his drug abuse history to obtain a clearance. He was successful. As a result of his falsification in 1994, he obtained the necessary clearance. In June 1999, he was not required to disclose any of his past drug abuse because it all fell outside the seven-year scope of the question. However, in October 1999, when specifically asked by the DSS agent about drug abuse beyond the previously disclosed marijuana use, Applicant falsely denied any other drug use. Not until the DSS became aware of the cocaine and crank abuse from another source and returned to Applicant to confront him with that fact, did he finally provide the full details of his drug abuse. Applicant's falsifications suggest that he cannot be relied upon to speak the truth if the truth presents potential adverse consequences for his personal interests.

None of the mitigating factors for falsification apply in this case. Certainly, Applicant did not engage in a prompt, good-faith disclosure of the information. Indeed, Applicant perpetuated the falsification as long as he could. Although clearance decisions are not designed to be either punishments for past bad conduct or rewards for good conduct, the government must be able to rely on an Applicant's willingness to report potentially adverse information about himself, both on clearance applications and in the work environment. Where even inadvertent security shortcomings may jeopardize classified information, the government must be able to perform necessary damage assessments on the compromise of classified information or assess an individual's continued fitness for access to classified information. I resolve Guideline E against Applicant.

In a similar fashion, the government has established its case under Guideline J. Applicant knew the answers were false when he provided them. Those falsifications had the potential to influence the course of the government's background investigation, and in one case influenced the outcome. I resolve Guideline J against 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

Paragraph 2. Guideline J: Against the Applicant

Subparagraph a: 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 January 2, 1992--and amended by Change 3 dated 16 February 1996, and by Change 4 dated 20 April 1999 (Directive).
2. Although Applicant did not execute the copy admitted as evidence at the hearing, and recalled executing a copy at the time of his clearance application (Tr. 30), he acknowledged that the answers contained on the 1994 NAQ were his, as well as being false (Tr. 31).
3. All the other adverse information listed on the NAQ (a 1982 DUI and a 1985 wage garnishment) was the same vintage as the reported drug abuse.