

DATE: December 4, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-25347

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant falsified a Questionnaire for National Security Positions by severely understating the amount of her drug use. This falsification was not mitigated. She mitigated her five to ten year old drug use. Adverse inference is not overcome. Clearance is denied.

STATEMENT OF THE CASE

On February 6, 2003, 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 March 16, 2003, and requested that the case be decided without a hearing. The Government submitted its File of Relevant Material (FORM) to the Applicant on May 2, 2003. The Applicant was given 30 days from receipt of the FORM to submit any documents in rebuttal, extenuation or mitigation. The Applicant received the FORM before May 14, 2003, and submitted no additional information. The case was received by the undersigned on June 18, 2003.

FINDINGS OF FACT

The Applicant is 27, single and has an Associate of Arts degree. She is employed by a defense contractor as an administrator, and she seeks to obtain or retain a DoD security clearance in connection with her 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 and the exhibits.

Paragraph 1 (Guideline H - Drug Abuse). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has used illegal drugs.

The Applicant began using illegal drugs when she was in high school. She used and purchased cocaine from 1993 through 1994, when her use was discovered by her parents. The Applicant states in her Answer to the SOR that she only used cocaine on weekends. However, in her sworn statement she says, "I would use it 3 times a day at school with friends at break, lunch and after school. I used it on the weekends when I could attend parties." (Government Exhibit 5 at 2.)

The Applicant began using marijuana about the same time she began using cocaine. Concerning her use she states, "I used marijuana about once a day on weekdays and numerous times on weekends at parties." She stopped using marijuana in approximately January 1998. During the entire time she used marijuana she also purchased it. (Government Exhibit 5 at 2.)

Finally, the Applicant used and purchased crystal methamphetamine beginning in about 1996. "I used Crystal Meth on a weekend basis until about Jan 98. I start Friday night through Saturday night using the drug." (Government Exhibit 5 at 3.)

The Applicant stopped using drugs when she was hired by her defense industry employer. That was because she might be required to take random urinalysis. She does not intend to use any drugs in the future.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she falsified material facts about her drug background during the clearance screening process.

On August 9, 2000, the Applicant filled out a Questionnaire for National Security Positions in which she was asked, "Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used a controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?" (Government Exhibit 4 at Question 27.) In response, the Applicant stated that she had used cocaine 5 times between 1994 and 1995, and marijuana 12 times between 1994 and 1997. The Applicant did not admit her use of crystal methamphetamine at all. These were false answers to relevant questions concerning the Applicant's history of drug abuse.

When questioned about the marijuana and cocaine usage numbers, the Applicant stated that she was uncertain about the number of times she had used each drug, so she picked a number not realizing how important being accurate was. (Government Exhibit 5 at 2.) Regarding her failure to list her crystal methamphetamine use at all she stated, "I did not reflect (*sic*) my meth usage in my security paperwork because I felt that I stated enough information of my prior drug use that it was not of any importance to my security clearance. I thought I recall stating the use of Crystal Meth in my security clearance paperwork. After reviewing the paperwork in my interview I learned I did not therefore I openly revealed all pertinent facts." (Government Exhibit 5 at 3.)

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 guideline. 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; ⁽¹⁾
- (2) illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution;

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;

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;

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 guidelines 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 have foreign connections that demonstrates 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 or continued holding 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); and that she 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 her, except in part. Applicant's cocaine use ended nine years ago. Her crystal methamphetamine and marijuana use ended almost six years before the record closed. She evinces a credible intent not to use any drugs in the future. Accordingly, Guideline H is found for 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. The Applicant's explanation that she just picked a random number out of her head is simply not tenable. Even assuming she only used cocaine on weekends for two years, that is well over 100 times. Five years of almost daily marijuana use adds up to close to 1000 times, not twelve. Finally, her failure to list crystal methamphetamine use at all is viewed as intentional and not an accident. Guideline E is found against the Applicant.

The Applicant's efforts at reform are noted, and she is commended for her decision to refrain from further drug use. Under the particular circumstances of this case, this evidence does not overcome the adverse information that has been presented by the Government.

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

Subparagraphs 1.a. through 1.f.: For the Applicant.

Paragraph 2: Against the Applicant.

Subparagraphs 2.a. through 2.c.: 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.