

DATE: December 29, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-07757

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's past Drug Involvement, more than ten years ago, is distant enough in time as not to be of present security significance. The same, however, can not be said of his Personal Conduct. He answered "NO" to question 24 on his August 2000 Questionnaire for National Security Positions (QNSP). The question asks, in part, "[h]ave you ever been charged with . . . any offense(s) related to alcohol . . ." In July of 1995, he was charged with Driving While Intoxicated (DWI). This wilful falsification is clearly of security significance; and as such Guideline E is found against the Applicant. Clearance is denied.

STATEMENT OF THE CASE

On June 25, 2003, 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 July 28, 2003.

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 Material (FORM) on October 27, 2003. 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 November 4, 2003, and Applicant's reply was received soon thereafter. The case was received by the undersigned for resolution on December 11, 2003. The issues raised here are whether the Applicant's past drug involvement and recent personal conduct militates against the granting of a security clearance. [The Applicant admits the underlying basis for all of the allegations, except for 2.b. as it pertains to his wilful falsification.]

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 36 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

Guideline H - Drug Involvement

1.a. and 1.b. During his "college years" and soon thereafter, about 1986~1992, the Applicant used cocaine "no more than five times" (Government Exhibit (GX) 4 at page 1, and GX 6 at page 3). In July of 1992, the Applicant was arrested, and he was subsequently found guilty of Solicitation to Possess or Use a Narcotic Drug (GX 6 at page 2, and GX 11). The Applicant intends no future drug involvement (GX 6 at page 3).

Guideline E - Personal Conduct

2.a. and 2.b. In July of 1995, the Applicant was arrested and charged, in part, with DWI (GX 6 at pages 3~4, GX 7 at page 3, and GX 8). In answering question 24 on his August 2000 QNSP, the Applicant answered "NO" (GX 4 at page 5). The question asks, in part, "[h]ave you **ever been charged** with . . . any offense(s) related to alcohol or drugs" (*Id*, emphasis supplied). In his January 2001 sworn statement, the Applicant avers that he thought he did not have to go back "beyond the seven year scope of the investigation" (GX 6 at page 3). This mistaken belief, if true, would preclude the Applicant from divulging his 1992 drug charge, but not from divulging his 1995 charge for DWI. It occurred only five years prior to the Applicant executing his 2000 QNSP.

Mitigation

In his response to the Government's FORM, the Applicant states, in part, the following: "I understand that the United States has a duty to protect itself from unauthorized disclosure of classified information. Especially, during these recent times of terrorism acts. I respect the Defense Counsel's arguments in wanting to protect the United States."

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

Condition that could raise a security concern:

- (1) Any drug abuse;

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, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity 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 E (personal conduct) and Guideline H (drug involvement); 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

Considering first the Applicant's past drug abuse, he used cocaine on an occasional basis more than ten years ago. The first disqualifying condition under Drug Involvement is therefore applicable as there was "drug abuse." However, the first and third mitigating conditions are also applicable as his drug involvement is clearly "not recent," and his averment coupled with this passage of time is a "demonstrated intent not to use any drugs in the future." As mitigation is shown, Guideline H is found for the Applicant.

The same can not be said as to his Personal Conduct, however, as the Applicant was less than candid in answering question 24 on his August 2000 QNSP. I find this to be a "deliberate omission;" and as such, the second disqualifying condition applies. In addition, there is absolutely no evidence that the Applicant came forward with the truth as to his DWI charge, until he was confronted with the falsehoods sometime later. The Applicant's lack of candor is thus clearly

of security significance; and as such, Guidelines 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.

Paragraph 2: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. 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