

DATE: October 31, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-07921

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Nygina T. Mills. Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's intentional pattern of omitting his drug history from his security application forms in 1994 and 2002 reflects adverse personal conduct that has not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On April 3, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated April 4, 1999, issued a Statement of Reasons (SOR) to 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 Applicant, and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked. Applicant filed his Answer to the SOR on arch 3, 2003. Applicant elected to have his case decided on a written record. The Government provided Applicant a copy of the File of Relevant Material (FORM) on May 21, 2003. Applicant received the FORM on June 5, 2003. His response was due on July 5, 2003. No response was received. The case was received by the undersigned for decision on July 21, 2003.

FINDINGS OF FACT

The following findings of fact are based on Applicant's answer to the SOR, the FORM, and Applicant's response to the FORM. The SOR alleges personal conduct (Guideline E). Applicant's admissions to all the factual allegations shall be incorporated into the Findings of Fact.

Applicant is 50 years old and has been employed by a defense contractor as a pipe insulator for the last 13 years. He seeks a secret clearance.

On August 9, 1994, Applicant executed a National Agency Questionnaire, Standard Form 398-2. Applicant answered "No" to Question 20.a. which asked, "Have you ever tried or used or possessed any narcotic (to include heroin or

cocaine) depressant (to include quaaludes), stimulant, hallucinogen (to include LSD or PCP) or cannabis (to include marijuana or hashish) or any mind-altering substance (to include glue or paint), even one time or on an experimental basis except as prescribed by a licensed physician? On January 21, 2002 (sworn statement, item 5), Applicant admitted using marijuana with varying frequency from 1971 to 1991.

On January 1, 2002, Applicant executed a Questionnaire for National Agency Positions, Standard Form 86. He answered "No" to Question 27, "Your Use of Illegal Drugs and Drug Activity - Illegal Use of Drugs Since the age of 16 or in the last 7 years, which ever is shorter, have you illegally used a controlled substance, for example marijuana, cocaine, crack, hashish, narcotics +(opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs" On January 21, 2002 (item 5), Applicant admitted using drugs on Christmas Eve 1996 to relieve the depression of being separated from his wife.

Applicant main reason for furnishing negative answers to both drug questions was that he experienced very little privacy while he was filling out both security questionnaires. In addition, he opined his job would be put in jeopardy if other classified personnel found out about his past drug use.

POLICIES

Enclosure 2 of the Directive sets forth disqualifying and mitigating conditions which must be given binding consideration in making security clearance determinations. These conditions must be considered in every case according to the pertinent guideline; however, the conditions are in no way 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 case presents its own unique facts and circumstances, it should not be assumed that the conditions exhaust the entire realm of human experience or that the conditions apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Conditions most pertinent to evaluation of the facts in this case are:

Personal Conduct

Disqualifying conditions (DC):

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.

Mitigating conditions (MC):

1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability;
2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;
3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts.

General Policy Factors (Whole Person Concept)

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at page 16 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; and, (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Burden of Proof

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information 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.

The Government must establish a *prima facie* case under personal conduct (Guideline E) which establishes doubt about a person's judgment, reliability and trustworthiness. Then, the Applicant has the ultimate burden of demonstrating with evidence in refutation, explanation, mitigation, or extenuation that it is clearly consistent with the national interest to grant or continue her security clearance.

CONCLUSIONS

Conduct which reflects poor judgment or dishonesty could indicate the person may not have the security qualifications to safeguard classified information in all places and at all times. Since the SOR alleges that relevant information was omitted from security forms in 1994 and 2002, DC 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 security worthiness determination*) must be considered. In August 1994 and January 2002, Applicant executed security applications requiring him to furnish truthful information about his past. On both occasions, Applicant intentionally failed to disclose his drug history even though his drug use was brief in 1996. An applicant's drug history is relevant and material information to assist the Department of Defense determine whether he has the requisite judgement to properly handle classified information.

There are potentially three mitigating conditions which may remove the security concerns of intentional falsifications. MC 1 (*the information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness or reliability*) has been evaluated but is not applicable because Applicant's past drug history was substantiated through Applicant's admission of drug use between 1971 and 1991, and briefly during the December holiday in 1996. MC 2 (*the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*) may apply when the falsification was an isolated incident which was not recent, and the individual has subsequently provided information voluntarily. MC 2 does not apply because there were two falsifications, and the most recent falsification occurred less than two years ago.

MC 3 (*the individual made prompt, good-faith efforts to correct the falsification before being confronted by the facts*) of the personal conduct guideline is also inapplicable to remove the security concerns of Applicant's intentional falsifications. MC 3 requires the individual to make prompt, good-faith efforts to correct the falsification before being confronted with the facts. Though the sworn statement (item 5) shows Applicant's disclosure of his drug history was not prompted by inconsistent information communicated to him by the investigator, Applicant never came forward with his drug history until he was asked to talk about it. Assuming there is insufficient information to determine how Applicant initiated his drug history in the sworn statement, there is no other evidence reflecting how Applicant revealed his drug history until he answered the SOR allegations of omitting his drug history. In sum, MC 3 is inapplicable to these facts.

Applicant exercised good judgment when he revealed his drug history in the sworn statement in January 2002. However, the disclosure does not eliminate the fact he intentionally omitted his drug history from two previous security application forms. Applicant's favorable job performance of 13 years with his present employer represents insufficient character evidence under the mitigating conditions of the personal conduct guideline and the whole person concept to conclude he warrants a security clearance.

FORMAL FINDINGS

Paragraph 1 (Personal Conduct): AGAINST THE APPLICANT.

Subparagraph 1.a.i. Against the Applicant.

Subparagraph 1.b.i. 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.

Paul J. Mason

Administrative Judge