

DATE: October 9, 2003

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-09039

**DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

**APPEARANCES**

**FOR GOVERNMENT**

Jonathan A. Beyer, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Between 1992 and 1999, the Applicant used marijuana 10 times. During a seven-month period in 2001, she used cocaine and ecstasy, with her cocaine use being daily and to the point of addiction. Her last use of illegal drugs occurred 18 months ago. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from illegal drug usage. Clearance is denied.

**STATEMENT OF THE CASE**

On February 19, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating DOHA could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. (1) On March 20, 2003, the Applicant answered the SOR and requested a hearing. The case was assigned to me on April 8, 2003. A Notice of Hearing was issued on April 23, 2003, scheduling the hearing, which was held on May 23, 2003.

The Government's case consisted of three exhibits (Gov Ex). The Applicant relied on her own testimony. (App Ex) The transcript (Tr.) of the hearing was received on May 30, 2003.

**FINDINGS OF FACT**

The SOR alleges illegal drug usage, Guideline H, which is admitted by the Applicant. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact.

The Applicant is 22 years old, a university student, has worked for a defense contractor since March 2001, and is seeking a security clearance. She will graduate from college in May 2004.

In 1994, the Applicant--then in 8 grade--tried marijuana for the first time. She did not use marijuana during high school, but next used marijuana in June 1999 during the week of college orientation. Her last use was at a college party October 1999. Between 1993 and 1999, she used marijuana 10 times. She grew up in the bad part of a large city, which she refers to as a ghetto. It was her desire to get out of there as soon as possible. In high school she was in junior ROTC, the honor society, was a member of the newspaper and yearbook staff, and a student ambassador for her high school.

In 1996, the Applicant's son was born. She was 15 years old, when he was born. Her son currently lives with her parents because of her class schedule. (Tr. 56) Her son's father, her former boy friend, was a bad influence on her life. She met him in April 1995-- when she was 14 years old--and first realized he was using illegal drugs in September 1995 when he was sent to jail. In May 1998, he violated his probation, returned to jail, and was released in May 2000. While he was in jail, the Applicant was free of his influence. From 1998 until March 2001, the Applicant used no illegal drugs, except for her use at a college party in October 1999.

In May 2000, following his release from jail, her former boyfriend moved in with her and her son. While living with him, the Applicant was unaware he was using drugs. In September 2000, the Applicant pressed charges against her former boyfriend after he assaulted her. In June 2001, he received a year and one half probation for his domestic violence. In November 2000, her former boyfriend moved out because she would not let him use illegal drugs. In March 2001, the two got back together. In October 2001, the relationship ended. Thanksgiving 2001, was the last time the Applicant used drugs which occurred at her former boyfriend's sister's home. Since her last use, the Applicant has been offered illegal drugs and has declined. She declined an offer at a 2002 New Year's Eve party.

In March 2001, she completed a security clearance questionnaire, SF 86, which she signed in May 2001. During spring break 2001 from college, the Applicant used ecstasy for the first time. This use was with her former boyfriend. Ecstasy, sold in pill form, cost her from \$15 to \$30 per pill. She was spending approximate \$60 per week for ecstasy, which initially bought one pill for her and one for her former boyfriend. By the time she stopped using ecstasy, the \$60 would buy four pills, two for each of them. The day following use found her very depressed, sad, and feeling bad. In May 2001, she last used ecstasy. Her use had gotten old. She stopped using because she did not like the after effects and it had become expensive.

In June 2001, she first used cocaine and next used it in August 2001 following an abortion. (Gov Ex2, p 4) From August 2001 through October 2001, she used it daily, to the point of addiction. This was a hard time in her life, a time when she did not care about herself. Cocaine would cause her to stay awake for three or four days at a time which caused her to be very tired. This in turn caused her to oversleep, to miss school and be late for work. She withdrew from college the fall semester of 2001. She was spending all her money on cocaine to include her scholarship, tuition, and rent money. One half ounce of cocaine costs her \$300 and would last her a week. She spent approximately \$3,500 on cocaine during this three-month period. On October 22, 2001, she stopped using cocaine because her life was falling apart due to her use and she was concerned for her son. In November 2001, she had a relapse the night before Thanksgiving. On that occasion, she was with her former boyfriend and his family. Following the incident, she did not have any contact with him for a year. Her last usage occurred when she was 20 years old.

Her use of cocaine made her feel paranoid, scared, uncomfortable, and shaky. (Tr. 32) She did not like the effects, but was addicted. Cocaine had become the most important thing in her life. Her son noticed a difference when she was using, for she wanted to be left alone, she would not talk, would not leave the house, and spent much less time cooking for her son. While using cocaine, her appetite was depressed. It was when her former boyfriend started "shooting up" cocaine that she realized things had gone too far. (Tr. 34) Her use of cocaine stopped cold.

In mid October 2001, the Applicant went to drug counseling. In weekly drug counseling she worked on her self-image and realized she had the power to stop using drugs. She continued counseling until the college closed for Christmas break in mid December 2001. In early January 2002, she resumed counseling then going twice a week seeing two different counselors. Domestic violence and better parenting were discussed with one of the counselors. The domestic violence counselor helped her get back on her feet financially and helped her to get food vouchers. Both her and her son received domestic violence counseling. The counseling was general psychological therapy. She learned what she could do to help herself through the week. It was recommended she attend narcotics anonymous but she chose not to. She continued her counseling until March 2002. When she left, she was told that she could come back anytime she felt the

need.

The Applicant saw her counseling as a stepping stone. In her mind, it was common sense that if she did not like using drugs, why was she doing it. Counseling helped her to think right. The counselors listened without passing judgment. She was unable to seek assistance from her parents concerning her drug use, even though her mother is aware the Applicant used drugs.

When the Applicant was using drugs, she saw her usage as an escape. She states it seemed like a good idea at the time. She now realizes her concerns and problems will be present with or without drugs. When she was using, she did not have a life; her son and drugs were the only reason for her to wake up in the morning. The Applicant's life is totally different now. She focuses on what is important. Her priorities in life are first her son, graduating from college, getting a degree, and getting a job. The spring semester 2001 the Applicant took 15 hours of classes, nine hours during the summer, and 17 hours the fall 2001 semester. Drugs are no longer an escape. She has no intention of using marijuana, ecstasy, cocaine, or any other illegal drugs or narcotics in the future. She sees her former boy friend, her son's father, once a month and talks with him daily by telephone. (Tr. 44)

### **POLICIES**

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive as well. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts proven must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. 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.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Drug Involvement, Guideline H. The Concern: Improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

Conditions that could raise a security concern and may be disqualifying include:

- a. Any drug abuse.
- b. Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.

Conditions that could mitigate security concerns include:

- c. A demonstrated intent not to abuse any drugs in the future.

### **BURDEN OF PROOF**

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively

indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant then has the burden of establishing her security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue her security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

### CONCLUSIONS

The Government has satisfied its initial burden of proof with regard to its security concerns over Applicant's drug involvement, Guideline H. The Applicant used marijuana 10 times between 1993 and October 1999, she used and was addicted to cocaine using it daily from August 2001 to October 2001. She last used cocaine in November 2001. During this three-month period she purchased approximately \$3,500 worth of cocaine. From March 2001 to May 2001 she purchased and used ecstasy every weekend. Because of her drug use and purchase Disqualifying Conditions (DC) a<sup>(2)</sup> and b<sup>(3)</sup> apply.

Prior to March 2001, the Applicant's illegal drug usage was limited to fewer than 10 uses of marijuana. The Applicant's major drug usage occurred after she had her current job and after she completed her SF 86. In March 2001, the Applicant used ecstasy during spring break and continued to use it on weekends for the next three months. She was spending \$60 a week on the drug. She stopped using because she did not like the drug's after effects and using it had gotten expensive. She tried cocaine for the first time in June 2001. During a three-month period from August 2001 to October 2001, the Applicant used cocaine daily and used it to the point of addiction. She spent her scholarship, tuition, and rent on cocaine. Cocaine had become the most important thing in her life. The only two reasons she got up in the morning were her son and her drug usage. The Applicant has been drug-free approximately 18 months. This period of abstinence must be balanced against her excessive use of cocaine and ecstasy during the seven-month period in mid-2001.

In reviewing this drug usage, the Applicant's motivation for stopping must be considered. She had used drugs as an escape following an abortion in August 2001. This is a hard time in her life, a time when she did not care about herself. It was a time she was influenced by her former boyfriend. She stopped because she is older and wants to set a good example for her son. She has realigned the priorities in her life. Her life is totally different now. She focuses on what is important. Her priorities and life are first her son, graduating from college, getting a degree, and getting a job. She has no intention of using any illegal drugs or narcotic in the future.

Mitigating Condition (MC) 1<sup>(4)</sup> does not apply, because the most recent usage occurred approximately 18 months ago, and after she submitted her security clearance application, especially when this period of abstinence is viewed against her extensive usage during the seven-month period in 2001.

Her intent not to use illegal drugs in the future and her candor about her drug use, has been considered. However, it is

insufficient for me to find her expressed intent never again to use illegal drugs in the future makes MC 3<sup>(5)</sup> applicable. She was using cocaine daily over a tthree-monthperiod. Even though this was a bad time in her life, her cocaine usage was extensive. It caused her to miss school, to be late for work, she spent her scholarship, tuition, and rent money to buy cocaine. As she expressed, when she was using cocaine, she did not have a life, her son and drugs were the only reason to get up each morning.

Accordingly, I find against the Applicant as to SOR subparagraphs 1.a., 1.b., 1.c., and 1.d. Guideline H, Drug Involvement, is resolved against the Applicant.

On September 2001 through March 2002, the Applicant received counseling, which assisted her with her decision to stop using drugs. The counseling also helped her with the domestic violence which had been a part of the relationship with her former boyfriend. She also received counseling in how to be a better parent. The record does not support the allegation this counseling was for "cocaine withdrawal." Therefore, I find for the Applicant as to SOR subparagraph 1.e.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

The awarding of a security clearance is not a once in a life time occurrence, but is based on current disqualifying and mitigating conditions. Under the Applicant's current circumstances-- specifically extensive use of cocaine and ecstasy over a seven-month period with the last use only 18 months ago--a clearance is not recommended, but should the Applicant be afforded an opportunity to reapply for a security clearance, in the future, she may well demonstrate persuasive evidence of her security worthiness. A clearance at this time is not warranted.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Drug Involvement, Guideline H: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: For 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. Clearance is denied.

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**Claude R. Heiny**

**Administrative Judge**

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 as amended.
2. DC1. Any drug abuse. (E.2.A8.1.2.1.)
3. DC b. Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.
4. MC1. The drug involvement was not recent. (E2.A8.1.3.1.)
5. MC 3. A demonstrated intent not to abuse any drugs in the future. (E2.A8.1.3.3.)