

DATE: October 25, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-27027

**DECISION OF ADMINISTRATIVE JUDGE**

**WILFORD H. ROSS**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant used crystal methamphetamine once in 1997 and approximately ten times in 2001. Both periods of use were connected to domestic strife. He had a security clearance the entire time. He expresses a credible intent not to use illegal drugs in the future and has three years of abstinence. Adverse inference is overcome. Clearance is granted.

**STATEMENT OF THE CASE**

On March 3, 2004, 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 25, 2004, and requested that the Decision be made without a hearing. The Department Counsel submitted the File of Relevant Material (FORM) to the Applicant on June 7, 2004. The Applicant was given 30 days after receipt of the FORM to submit any additional information to the Administrative Judge. The Applicant acknowledged receipt of the FORM on June 21, 2004, and submitted additional information on July 14, 2004. The Department Counsel did not object to the admission of the additional information. The case was received by the undersigned for Decision on July 28, 2004.

**FINDINGS OF FACT**

The Applicant is 37 and married. He is employed by a Defense contractor, and he seeks to retain a DoD security clearance previously granted in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a continued 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, the exhibits and the live testimony.

Paragraph 1 (Guideline H - Drug abuse). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he abuses illegal drugs.

The Applicant first used crystal methamphetamine in 1997. He indicates that this occurred after he was involved in a physical dispute with his wife. After they exchanged blows, he went to a friend who offered him the drug. He took the drug, returned home, and was arrested by the police. He was charged with being under the influence of drugs and with spousal abuse. He plead guilty to spousal abuse and was sentenced to serve 20 days in jail, probation, a fine and to attend anger management courses. He fulfilled all the requirements of his sentence and the criminal charges were dismissed. (Government Exhibit 3 at 5. Also Government Exhibits 5, 6 and 7.)

The Applicant did not use crystal methamphetamine again until the Summer of 2001. According to the Applicant, his wife urged him to use crystal methamphetamine to help their marital relationship. He used it approximately ten times over a two month span. He has not used the drug since then and he and his wife are separated and getting a divorce. (Government Exhibit 5 at 3-4.)

Paragraph 2 (Guideline E - Personal conduct). The Government alleges in this paragraph that the

Applicant is ineligible for clearance because he has engaged in conduct which shows questionable judgment, unreliability, dishonesty, or unwillingness to comply with rules or regulations.

The Applicant has held a security clearance since 1990. He had knowledge of the Government's prohibitions concerning drug use while holding a security clearance when he used crystal methamphetamine in 1997 and 2001.

### 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)

Condition that could raise a security concern:

- (1) any drug abuse;

Conditions that could mitigate security concerns:

- (1) the drug involvement was not recent;
- (2) the drug involvement was an isolated or aberrational event;
- (3) a demonstrated intent not to abuse any drugs in the future.

#### Guideline E (Personal conduct)

Condition that could raise a security concern:

- (5) a pattern of dishonesty or rule violations, including the violation of any written or recorded agreement made between

the individual and the agency.

Condition that could mitigate security concerns:

(5) the individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation or duress.

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 be involved in acts of drug and spousal abuse that demonstrates poor judgement, 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 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 abused illegal drugs and been involved in a drug related incident (Guideline H); and that he used drugs while holding a security clearance, which conduct indicates poor judgment, untrustworthiness and unreliability by the Applicant (Guideline E).

The Applicant, on the other hand, has successfully mitigated the Government's case. The evidence shows that the Applicant used drugs in two short periods seven years apart. The last use was over three years ago. He is remorseful for his conduct, and expresses an intent not to abuse drugs in the future. There is no allegation of falsification and his sworn statement is an in depth discussion of his situation.

Under the facts of this case Disqualifying Conditions 1 applies (*any drug abuse*). However, due to the nature and extent of the use discussed above, Mitigating Factors 1 (*the drug involvement was not recent*); 2 (*the drug involvement was an isolated or aberrational event*); and 3 (*a demonstrated intent not to abuse any drugs in the future*) also apply. Guideline H is found for the Applicant.

The decision to use illegal drugs while holding a security clearance was a very foolish one for the Applicant to make. In his Additional Information statement submitted on July 14, 2004, he says, "I rue the day that I took illicit drugs and expressed anger on my spouse. I am extremely remorseful for these actions." Disqualifying Factor 5 under Guideline E is most applicable to this allegations (*a pattern of dishonesty or rule violations, including the violation of any written or recorded agreement made between the individual and the agency*). However, under the particular facts of this case, Mitigating Factor 5 also applies (*the individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation or duress*). Guideline E is found for the Applicant.

In addition, application of the general policy factors (whole person concept) is appropriate and supports a decision in the Applicant's favor. The Applicant is motivated to continue his sobriety (factor g.), he shows considerable evidence of rehabilitation (factor f.), and, under the circumstances of this case, the probability that the Applicant will return to using drugs virtually nil (factor i.).

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

### **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.

Subparagraph 1.a.: For the Applicant.

Subparagraph 1.b.: For the Applicant.

Subparagraph 1.c.: For the Applicant.

Subparagraph 1.d.: For the Applicant.

Paragraph 2: For the Applicant.

Subparagraph 2.a.: For the Applicant.

### **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Wilford H. Ross

## Administrative Judge