

DATE: February 11, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-29691

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Nygina T. Mills, Esq., Department Counsel

FOR APPLICANT

Richard J. Pascal, Esq.

SYNOPSIS

Applicant abused cocaine from about his early 20s to at least October 1998 and consumed alcohol to excess on occasion to late December 2002. He was arrested twice (October 1998 and November 2001) on illegal possession charges and once (November 1998) for driving under the influence. While there is no evidence Applicant has been involved with cocaine since his November 2001 illegal possession when he would have inhaled cocaine but for his arrest, or with alcohol since late December 2002, the risk of future drug and alcohol abuse and related criminal conduct cannot be completely discounted based on his history. Applicant's lack of candor about his illegal drug involvement on his security clearance application and during an April 2002 interview engender serious doubt as to whether his representations can be relied on. Clearance is denied.

STATEMENT OF CASE

On February 19, 2003, the Defense Office of Hearings and Appeals (DOHA) 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. (1) DOHA recommended referral to an administrative judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on Criminal Conduct (Guideline J), Drug Involvement (Guideline H), Alcohol Consumption (Guideline G), and Personal Conduct (Guideline E).

On March 7, 2003, Applicant, acting *pro se*, filed his response to the SOR allegations. By letter dated April 3, 2003, Applicant was advised his answer was not complete because he failed to indicate whether he wanted a hearing. Applicant subsequently requested a hearing before a DOHA administrative judge, and the case was assigned to me on August 8, 2003. (2) Pursuant to formal notice dated August 18, 2003, a hearing was scheduled for September 17, 2003. At the hearing Applicant was represented by legal counsel. (3) Six Government exhibits and two Applicant exhibits were entered into the record. Applicant offered a third document that was marked for identification, admission dependent on post-hearing submission of a signed copy. Testimony was taken from the Applicant and two witnesses on his behalf, as

reflected in a transcript received by DOHA September 29, 2003. A signed, notarized copy of the document previously marked as Exhibit C was received on September 30, 2003. The Government having filed no objection by the October 6, 2003, the document was received in evidence.

FINDINGS OF FACT

DOHA alleges as security disqualifying: (1) Criminal Conduct concerns due to a 1994 domestic abuse offense, October 1998 and November 2001 illegal drug (cocaine) possession offenses, a November 1998 driving under the influence (DUI), and making false statements on an October 2000 security clearance application (SF 86) and in an April 2002 sworn statement; (2) Drug Involvement because of Applicant's drug offenses and use of cocaine from 1994 to November 2001, which continued after treatment for cocaine abuse and after he completed his SF 86; (3) Personal Conduct for failure to disclose on his SF 86 his October 1998 and 1994 criminal arrests and his cocaine abuse, and for withholding information regarding his cocaine use and pending drug charge; (4) Alcohol Consumption based on excessive consumption at times from about 1975 to at least April 2002, the 1998 DUI offense, and continued consumption following treatment for alcohol abuse in 1999.

In his Answer to the SOR, Applicant admitted the criminal offenses, the use of cocaine from 1994 to 1999, treatment for cocaine and alcohol abuse in 1999, and a single incident of cocaine use thereafter in November 2001. With respect to the alleged falsifications, Applicant admitted the deliberate omission only of his cocaine abuse from his SF 86, explaining he did not list the October 1998 drug possession offense on the advice of counsel, and had forgotten about the 1994 domestic assault. Applicant denied any intentional withholding of material information in his April 2002 statement. He admitted the alcohol consumption allegations, including continued drinking, but denied he was imbibing on a weekly basis. The facts admitted to by Applicant are accepted and incorporated as material findings. After a thorough review of the evidence, and on due consideration of the same, I render the following additional findings of fact:

Applicant is a 44-year-old first class pipe welder employed by a defense contractor most recently since late October 2000. He had worked for the company from December 1977 to August 1996 when he was laid off. Applicant seeks a secret security clearance for his present duties.

A consumer of alcohol since age sixteen (1975), Applicant drank primarily on weekends, occasionally to intoxication. Circa 1993, he abstained from alcohol for about eight months. In 1994, he and his spouse had a verbal altercation that escalated into mutual shoving. Applicant admits alcohol may well have had an impact on his behavior. After a tenant contacted the police, Applicant was arrested for domestic abuse and directed into a six-week anger management program which he completed.

While scotch liquor was Applicant's drug of choice, he abused cocaine "every now and then"--at times once or twice per month throughout his 20s and into his 30s. From August to October 1998, Applicant inhaled cocaine on a weekly basis during a period of marital discord. He purchased cocaine, but infrequently.

In October 1998, Applicant gave a ride to a friend of his sister's, who was known to him to be a cocaine user. They were stopped by police who had her under surveillance, and she dropped cocaine she had in her possession onto the floor of Applicant's truck. Both Applicant and his passenger were arrested, Applicant for illegal drug possession because of the cocaine found in his vehicle. His arrest caused his spouse to confront him about his drug use, and she threatened divorce in the event of any future drug use. Applicant promised he would abstain from any future drug involvement.⁽⁴⁾ In mid-January 1999, Applicant was placed into a diversion program where he was required to complete substance abuse treatment.

While the drug charge was still pending, Applicant was arrested for DUI in November 1998. After drinking three or four scotch drinks at his residence, Applicant was stopped near the police station for failure to use his turn signal. On admitting he had consumed "a few" alcohol drinks, Applicant was administered a breath test, which he failed. Applicant pleaded nolo contendere to DUI and was sentenced to complete the substance abuse program mandated for the drug possession charge, ten hours of community service, \$867 in fines, and to three months loss of license. Applicant continued to consume alcohol following his arrest for DUI.

Over the February to August 1999 time frame, Applicant attended eleven individual counseling sessions in an outpatient substance abuse program for treatment of cocaine abuse and alcohol abuse. Assessed on admission as having a substance abuse problem bordering on chemical dependence, Applicant was advised to abstain completely from alcohol and cocaine. Motivated primarily by the legal consequences of his DUI, Applicant continued to drink alcohol on occasion through at least mid-March 1999. While he abstained from mood altering substances thereafter, he was still exhibiting denial, minimizing the effects of alcohol and resisting change as of early July 1999. By his discharge from the outpatient program in mid-August, he had developed a positive attitude toward recovery and gained some knowledge into substance abuse and chemical dependency. In late September 1999, Applicant was discharged from the diversion program based on his successful completion of the outpatient substance abuse counseling. Sometime in 2000, Applicant resumed his consumption of alcohol, although he claims to not recall any specific event or occasion which precipitated the return to drinking.

After five years working as an electrician, welder and then machine operator, Applicant returned to work for the defense contractor in late October 2000. In conjunction with his rehire, Applicant completed a security clearance application (SF 86) on or about October 18, 2000. Now claiming that he "breezed through" the SF 86, (5) Applicant listed a 1979 carrying a concealed weapon (buck knife). In response to alcohol/drug related inquiries, Applicant disclosed his 1998 DUI and 1999 counseling, indicating it was an abuse program for the DUI. Nowhere on the form did Applicant disclose any illegal drug involvement or any criminal drug charges. Applicant claims he understood from legal counsel that completion of the diversion program would have the legal effect of rendering the October 1998 drug possession offense a nullity (*i.e.*, it would be as if the charge had never existed) so he would never have to report it. His claim of a good faith misunderstanding is fatally undermined by his patently false answer to question 27 on the SF 86 regarding any drug involvement in the past seven years and by his admission at the hearing that he sought no specific advice from a security official or an attorney as to whether he had to report the illegal drug charge on his SF 86. Applicant could offer no excuse for his failure to report his cocaine use other than that it was due to his stupidity. Concerning his failure to list his arrest in 1994 for domestic abuse, his claim to have forgotten the offense is accepted in light of the isolated nature of the charge, the passage of time since the incident, and it being disposed of through early intervention.

After drinking to intoxication in early November 2001, Applicant secured a ride home from an acquaintance and his girlfriend. Unaware they were heading out to purchase cocaine at the time, Applicant remained in the vehicle as the female entered a home where she bought some cocaine. Once she was back in the car, she offered him some cocaine. Applicant gave her some money for a few lines, and he stuffed the cocaine in his sock. They were pulled over and Applicant was arrested for possession of a schedule I-II drug (cocaine). Sometime after April 2002, the charge was deferred for five years, he was placed on unsupervised probation with counseling and ordered to perform 100 hours community service.

While the November 2001 drug possession charge was still pending, Applicant was interviewed by a contract investigator for the Defense Security Service on April 24, 2002. Applicant and the investigator initially discussed his 1979 carrying a concealed weapon and 1998 DUI offenses, and his counseling in a "court order DWI program." Applicant admitted he was still drinking alcohol, but moderately, once a week or less on a social basis. At 1647 hours that day, Applicant executed a sworn statement containing the foregoing. The interview continued thereafter, with the focus on Applicant's drug use and failure to report that drug use on his SF 86. Applicant indicated he "briefly [sic] experimented with cocaine" during 1998 and described use of small amounts of powdered cocaine about once a week from about August 1998 to October 1998. He admitted to purchasing small amounts of cocaine from persons he knew, but maintained he had broken these ties. Applicant maintained he "took the opportunity to roll [his] drug abuse problem in with [his] alcohol counseling," and since felt no need to resort to alcohol or drugs to deal with his personal problems. While Applicant initially denied intentional falsification of his SF 86 regarding his drug use, he subsequently apologized for not reporting the information on his SF 86 ["it was to [sic] painful to deal with"]. Applicant characterized his drug use as "an isolated incident" in his life which occurred more than three years ago and denied any subsequent use. Applicant attested to the truth of these statements at 1810 hours.

The following day, on April 25, 2002, Applicant again met the contract investigator, this time to address his failure to report his drug-related arrests or drug use on his SF 86 or during his interview with the investigator on April 24. Applicant denied any intentional falsification, and indicated he had been advised by his attorney and a representative of the state attorney general's office "[The] slate had been wiped clean, and [he] didn't have to list or explain anything

about those arrests in the future." Specifically, with regard to his arrest in November 2001, Applicant claimed his attorney had told him he had not been charged because there was not yet a court date; that there was no felony charge because the attorney general was not going to pursue it. When Applicant addressed the November 2001 drug possession, he admitted he had contributed money for the purchase of a couple of lines of cocaine that he then put in his sock. As for his failure to report his October 1998 drug offense, Applicant explained the omission to his understanding that everything about that arrest had been wiped clean on his completion of the diversion program. As for the drug use reported during his April 24 interview, Applicant asserted the information was true because he had not used cocaine on the occasion of his arrest for possession in November 2001.

There is no proof Applicant inhaled any cocaine on the occasion of his arrest for illegal drug possession in November 2001, or of any use of cocaine since his last admitted use in October 1998.⁽⁶⁾ Applicant's admission to weekly use of cocaine from August 1998 to October 1998 is accepted, as there is no information to indicate more frequent use during that time frame. Yet he is found to have misrepresented his illegal drug involvement on April 24, 2002, when he described his use of cocaine as brief experimentation in 1998 and failed to reveal his use of cocaine on occasion throughout his 20s and 30s, and his arrests for drug possession.

Applicant continued to consume alcohol to late December 2002. On a couple of occasions, he operated a motor vehicle when he was felt sufficiently impaired by alcohol that he shouldn't have driven. Applicant had consumed three to four scotch and water drinks in each instance. In November 2002, Applicant gave up cigarette smoking. In late December 2002, he decided to stop drinking alcohol, primarily because of the urges to smoke when he drank. In January 2003, he began attending Alcoholics Anonymous (AA), going to meetings once a week (twice when he isn't working on Saturday evenings) on a consistent basis since. The record is silent as to the quality of his participation.

Applicant and his spouse keep alcohol in their home as his spouse likes beer. As of September 2003, there was beer in coolers in Applicant's garage. Applicant denies he is tempted to consume any alcohol. Applicant's spouse works as a bartender part-time. She does not think Applicant has ever had an alcohol problem.

Since his rehire by the defense contractor, Applicant has worked on average 48 to 56 hours per week. He has not been disciplined for any workplace infraction. His present supervisor, who is unaware of the security issues which led to the SOR, attests to Applicant's reliability and hard work. A senior manufacturing representative, who used to serve as Applicant's general foreman, has been able to count on Applicant to perform critical jobs with a high standard of integrity and workmanship.

For the past 18 years, Applicant has been involved in a fraternal organization in his community. Through that organization, he has become acquainted with a local sheriff and a captain (now retired) of a local police force. In their experience, Applicant has demonstrated good character and personal integrity. For the past four years, Applicant and his spouse have served as sponsor parents for students at the nearby military academy.⁽⁷⁾

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single guideline may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment,

irresponsibility or emotionally unstable behavior. See Directive 5220.6, Enclosure 2, Section E2.2.4.

Considering the evidence as a whole, I find the following adjudicative guidelines to be most pertinent to this case:

GUIDELINE J

Criminal Conduct

The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness (E2.A10.1.1.).

Conditions that could raise a security concern and may be disqualifying include (E2.A10.1.2.):

Allegations or admission of criminal conduct, regardless of whether the person was formally charged (E2.A10.1.2.1.);

A single serious crime or multiple lesser offenses (E2.A10.1.2.2.).

Conditions that could mitigate security concerns include (E2.A10.1.3.):

None.

GUIDELINE H

Drug Involvement

The Concern (E2.A8.1.1.):

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 (E2.A8.1.1.1.).

Drugs are defined as mood and behavior-altering substances, and include (E2.A8.1.1.2.):

Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens) (E2.A8.1.1.2.1.); and

Inhalants and other similar substances (E2.A8.1.1.2.2.).

Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction (E2.A8.1.1.3.).

Conditions that could raise a security concern and may be disqualifying include (E2.A8.1.2.):

Any drug abuse (see above definition) (E2.A8.1.2.1.);

Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution (E2.A8.1.2.2.);

Evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program (E2.A8.1.2.4.).

Conditions that could mitigate security concerns include (E2.A8.1.3.):

None.

GUIDELINE G

Alcohol Consumption

The Concern: Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness (E2.A7.1.1.).

Conditions that could raise a security concern and may be disqualifying include (E2.A7.1.2.):

Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use (E2.A7.1.2.1.);

Evaluation of alcohol abuse . . . by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program (E2.A7.1.2.4.).

Conditions that could mitigate security concerns include (E2.A7.1.3.):

Positive changes in behavior supportive of sobriety (E2.A7.1.3.3.).

GUIDELINE E

Personal Conduct

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information (E2.A5.1.1.).

Conditions that could raise a security concern and may be disqualifying also include (E2.A5.1.2.):

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 (E2.A5.1.2.2.);

Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination (E2.A5.1.2.3.);

A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency (E2.A5.1.2.5.).

Conditions that could mitigate security concerns include (E2.A5.1.3.):

None.

* * *

Under Executive Order 10865 as amended, and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the administrative judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the administrative judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of potentially disqualifying conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

CONCLUSIONS

Having considered the record evidence in light of the appropriate legal precepts and factors, I conclude the Government established its case under Guidelines J, H, G, and E.

Throughout his 20s and 30s, Applicant engaged in the occasional abuse of alcohol and cocaine. Scotch liquor was his drug of choice, as he drank twice weekly, to intoxication one to three times a month, but he also inhaled cocaine on average twice per month, with weekly use during a period of marital discord from August to October 1998. With his arrest in October 1998 for illegal drug possession, and in November 1998 for DUI, Applicant's involvement with mood-altering substances had reached abusive levels. Under court order to attend an outpatient substance abuse program, Applicant was diagnosed in February 1999 as suffering from cocaine abuse and alcohol abuse, his substance abuse problem bordering on dependency. With his attendance at outpatient counseling motivated initially by his desire to avoid legal sanctions should he fail the diversion program, Applicant exhibited significant denial well into treatment, and he continued to consume alcohol against his counselor's advice through his first few sessions. He was successfully discharged from the program in mid-August 1999, but resumed drinking in 2000. On a few occasions over the next few years, he drank in quantity (three or four scotch drinks) that left him sufficiently impaired by alcohol to where he shouldn't have operated a motor vehicle but did anyway. Alcohol so clouded his judgment on at least one occasion in November 2001 that he bought some cocaine from a companion--cocaine that he would have inhaled had he not been arrested shortly after he took possession of the drug.

Excessive consumption of alcohol is of concern because it often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness. Applicant's use of cocaine generates a risk not only of unacceptable personal impairment, but it reflects as well disregard of the laws prohibiting use. Several disqualifying conditions apply because of his substance abuse: under Guideline H, Drug Involvement, E2.A8.1.2.1., any drug abuse and E2.A8.1.2.2. illegal drug possession, and under Guideline G, Alcohol Consumption, E2.A7.1.2.1. alcohol-related incidents away from work, such as driving while under the influence, fighting. . . .⁽⁸⁾ Furthermore, on intake into court-ordered counseling in 1999, Applicant was assessed as suffering from alcohol abuse and cocaine abuse, bordering on addiction. The clinician who counseled him from April 1, 1999, until August 20, 1999, assessed his progress in treatment for "chemical dependence." While neither the intake counselor nor his primary counselor appears to have a master's degree in clinical social work, they are recognized by the state as qualified to treat substance abuse problems.⁽⁹⁾ Common sense dictates the applicability of disqualifying conditions E2.A.8.1.2.4 (Evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program) under Guideline H, and E.2.A7.1.2.4. (Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program) under Guideline G.

Applicant submits in mitigation there is no risk of recurrence of substance abuse, as he no longer associates with those individuals with whom he used cocaine in the past, and he has been a consistent attendee at AA meetings since January 2003. In Applicant's favor, there is no evidence of any involvement with cocaine since November 2001⁽¹⁰⁾ or with alcohol since late December 2002. Nine months of abstinence from all mood-altering substances is a positive change in

behavior supportive of sobriety (*see* E2.A7.1.3.3. under Guideline G) and some demonstration of intent not to abuse any drugs in the future (*see* E2.A8.1.3.3. under Guideline H). Yet, the November 2001 relapse followed three years of abstinence from illegal drugs and months of counseling for his substance abuse (alcohol and cocaine) problem. While Applicant's attendance at AA since January 2003 is a positive step, there is little in the record about the quality of his participation. His spouse's attitude toward his drinking--she testified she has never thought Applicant to have an alcohol problem--raises questions about whether he has adequate support at home to continue his sobriety. At this juncture, it is premature to conclude with reasonable certainty that his substance abuse is safely of the past.

Moreover, the 1994 domestic abuse, the illegal drug possession offenses in October 1998 and November 2001, his November 1998 DUI, and his deliberate efforts to conceal his cocaine involvement from the Department of Defense during the investigation of his background for a security clearance, constitute a pattern of criminal activity that creates serious doubts about his judgment, reliability and trustworthiness.⁽¹¹⁾ Applicant and his spouse testified, unrebutted by the Government, that the domestic abuse did not go beyond physical shoving. With no recurrence of similar behavior since 1994 and Applicant and his spouse enjoying improved relations of late, that conduct is considered remote and not likely to be repeated. However, the drug and alcohol-related offenses continue to raise significant security concerns. Although the October 1998 DUI is not recent, on at least a couple of occasions since 2000 Applicant operated a motor vehicle when he was impaired enough by alcohol that he shouldn't have driven. Applicant's November 2001 illegal drug possession was in known disregard of the Government's zero tolerance policy against such involvement. Clearly, neither his defense-related employment nor the laws against use of controlled dangerous substances served as a deterrent.

Moreover, aware the Government would not look favorably on his illegal drug involvement, Applicant concealed his cocaine abuse and October 1998 illegal possession charge when he completed his SF 86 in October 2000. The deliberate omission, concealment or falsification of relevant and material facts from any personnel security questionnaire is potentially security disqualifying (*see* E2.A5.1.2.2. under Guideline E), as it could indicate that the individual may not properly safeguard classified information. Since Applicant answered "No" to question 27 on the SF 86 concerning any illegal drug use/activity in the last seven years, it is especially difficult to believe he acted in good faith with regard to his failure to disclose the illegal possession charge. The plain language of the SF 86 requires the reporting of the offense, even if it had been stricken from his record. Applicant made no effort to check with legal counsel or security officials to ascertain whether he was correct in understanding that the offense need not be reported. His claim of good faith reliance on poor legal advice is undermined by his hearing testimony that "[his] conscience wasn't too clear on that, and that's why [he] explained, [he] came forth with [the contract investigator] on everything."⁽¹³⁾

Applicant was less than candid with the investigator as well, however. When asked on April 24, 2002, about his illicit substance abuse, Applicant expressed brief experimentation with cocaine in 1998. He described his drug use as "an isolated incident in [his] life," and while he discussed his October 1998 possession, he did not mention the November 2001 charge that was pending against him. Applicant's misrepresentations to the investigator are not only security disqualifying in their own right (*see* E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters from any personnel security questionnaire), but preclude me from applying mitigating condition E2.A5.1.3.3. (The individual made prompt, good faith efforts to correct the falsification before being confronted with the facts) to his SF 86 falsifications.

When interviewed the following day, on April 25, 2002, Applicant indicated he understood about full disclosure and wanted to bring other matters out in the open. Yet he did not provide an accurate accounting of cocaine abuse and claimed his omission of his November 2001 arrest was due to his understanding that he had not been charged with a felony offense. Probably due to his desire to retain his job, Applicant remains unwilling to acknowledge his lack of candor with the investigator. At his hearing, he testified he "just opened up and told him everything."⁽¹⁴⁾ His sworn statements of record reflect otherwise. Applicant has an obligation to be completely candid with the Government at all times, and specious denials of intentional falsification only compound the doubts for his reliability in this regard. Applicant's unmitigated record of substance abuse, criminal conduct, and deliberate misrepresentations precludes me from concluding that it is clearly consistent with the national interest to grant him a security clearance.

FORMAL FINDINGS

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

Paragraph 1. Guideline J: AGAINST THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Paragraph 2. Guideline H: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against the Applicant

Subparagraph 2.d.: Against the Applicant

Subparagraph 2.e.: Against the Applicant

Subparagraph 2.f.: Against the Applicant

Paragraph 3. Guideline E: AGAINST THE APPLICANT

Subparagraph 3.a.: Against the Applicant

Subparagraph 3.b.: For the Applicant

Subparagraph 3.c.: Against the Applicant

Subparagraph 3.d.: Against the Applicant

Paragraph 4. Guideline G: AGAINST THE APPLICANT

Subparagraph 4.a.: Against the Applicant

Subparagraph 4.b.: Against the Applicant

Subparagraph 4.c.: Against the Applicant

Subparagraph 4.d.: Against the Applicant

Subparagraph 4.e.: For the Applicant⁽¹⁵⁾

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. Clearance is denied.

Elizabeth M. Matchinski

Administrative Judge

1. The SOR was issued under case number 02-29691 under the authority of Executive Order 10865 (as amended by Executive Orders 10909, 11328, and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4). Subsequent to the issuance of the SOR, DOHA Columbus assigned a new case number, 03-11231, to the file. An apparently administrative decision by DOHA Columbus to change the case number has no impact absent a formal amendment to the SOR.
2. At the hearing, Department Counsel produced a notarized document in her file, dated April 22, 2003, in which Applicant indicated he wanted a hearing before a DOHA administrative judge.
3. By letter dated January 26, 2004, legal counsel withdrew his representation.
4. Applicant's spouse testified she was unaware he "might have used drugs once in awhile" but she never made a big issue of it until after his arrest for illegal possession in October 1998. (Tr. 135-36).
5. *See* Tr. 76.
6. Applicant was subjected to urinalysis during his outpatient program in 1999. Specimens given in March 1999 and early July 1999 were negative for all illicit drugs tested, including cocaine.
7. It is not clear what, if anything, these law enforcement professionals or the academy's staff, know of Applicant's illegal drug involvement.
8. Applicant testified alcohol may well have been involved in the physical altercation with his spouse in 1994, which led to his arrest for domestic assault and completion of anger management classes ordered in early intervention.
9. Applicant was referred to this outpatient program by the diversion program he was placed in by the court. The clinician who treated Applicant from April 1, 1999, is credentialed LCDP, CDCS. Under the pertinent state's licensing statutes, LCDP is an abbreviation for "licensed chemical dependency professional," an individual who is licensed by the licensing board to practice and supervise substance abuse counseling and who meets the state's qualifications. Moreover, under the license procedure for chemical dependency professionals, the state makes it clear that a CDCS is a chemical dependency clinical supervisor as per the state's board for certification of chemical dependency professionals requirements. *See* Sections 5-69-2, 5-69-3, and 5-69-8 of [state X's] general laws.
10. The fact that he did not use the cocaine in November 2001 does not eradicate the security concerns, as he admits he would have used the drug but for the timing of his arrest.
11. *See* disqualifying conditions E2.A10.1.2.1., allegations or admissions of criminal conduct, and E2.A10.1.2.2., a single serious crime or multiple lesser offenses. With respect to his false statements, Applicant violated Title 18, Section 1001 of the United States Code, which states in pertinent part: [\(12\)](#)
12. Section 1001 of the United States Code provides in pertinent part:
 - (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully-
 - (1) falsifies, conceals, or covers up by any trick scheme, or device a material fact;
 - (2) makes any materially false, fictitious, or fraudulent statement or representation; or
 - (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;shall be fined under this title or imprisoned not more than 5 years, or both.

13. *See* tr. 76.

14. *See* tr. 41.

15. A favorable finding is returned as to subparagraph 4.e., based on the evidence of abstinence since late December 2002.