

DATE: March 5, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-16218

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of involvement with marijuana from 1977 to at least February 2000 and with cocaine from the early 1980s to October 1999. Alcohol became a problem for him in about 1992, and his drinking escalated following his divorce in 1994. There is an unacceptable risk of future marijuana abuse, as Applicant continues to associate with individuals who smoke marijuana. As of December 2002, he was imbibing alcohol in quantity of up to five beers, despite completing a thirty-day alcohol rehabilitation treatment program in July 2001. Personal conduct and criminal conduct concerns also persist as Applicant was not candid about his illegal drug involvement when he completed his security clearance application in August 2000. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to 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), issued a Statement of Reasons (SOR), undated, 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. 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: 1) illegal drug involvement (guideline H) with alleged cocaine abuse from Applicant's late teens (circa 1980/81) to at least October 1999; marijuana use from about 1977 to at least 1999; use of amphetamines; treatment for chemical dependence in 2001; and drug-related arrests in October 1999 and February 2000; 2) excessive alcohol consumption (guideline G) from approximately 1977 to at least March 2002 with a drunk driving incident in October 1999 and treatment for alcohol dependence in 2001; 3) personal conduct (guideline E) and criminal conduct (guideline J) related to deliberate falsification of an August 2000 security clearance application; and 4) criminal conduct because of his October 1999 narcotics possession and his February 2000 marijuana possession offenses.

On August 30, 2002, Applicant responded to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge. The case was assigned to me accordingly on November 25, 2002. Pursuant to formal notice dated November 27, 2002, the hearing was scheduled for December 17, 2002.

At the hearing, which was held as scheduled, the Government submitted eight documentary exhibits, and called Applicant as an adverse witness. Applicant's case consisted of his testimony. On the Government's motion, subparagraphs 1.f. and 2.d. of the SOR were amended to reflect Applicant received treatment from April 18, 2001 to May 2, 2001, for a condition diagnosed as chemical (as opposed to alcohol and cocaine) dependence, and that he received a discharge diagnosis of alcohol dependence and cocaine abuse-early full remission. The record was also held open until January 2, 2003, at the Government's request, to give the parties time to produce evidence on the issue of whether Applicant had completed a handwritten security application on which he had disclosed his involvement with illegal drugs, including his arrest in February 2000 for illegal possession of marijuana. No further evidence was submitted by either party, and the record closed on January 2, 2003. With the receipt on January 3, 2003, of the transcript of the hearing, this case is ripe for a decision.

FINDINGS OF FACT

After a thorough review of the evidence, and on due consideration of the same, I render the following findings of fact:

Applicant is a 41-year-old shipfitter with a history of illicit drug involvement and alcohol abuse while he held a Confidential clearance for his duties with a defense contractor (company A). The salient facts regarding his substance abuse and defense-related employment are as follows:

Circa 1977, when Applicant was fifteen years of age, he began to smoke marijuana a few times per week. During his late teens, he experimented with amphetamines on a couple of occasions, and began to use cocaine once monthly on average. [\(1\)](#)

In August 1980, Applicant commenced work as a shipfitter with defense company A. Applicant continued to smoke marijuana a few times per week, purchasing it on occasion, and to snort cocaine once monthly on average, buying \$30.00 worth per month, until about July 1987. Following the birth of his daughter that July, Applicant and his spouse purchased a home. With less money to spend on drugs and the responsibilities of having a child, Applicant's cocaine use became "every now and then" with friends. Granted in August 1987 a Confidential security clearance for his defense-related work at company A, Applicant continued thereafter to snort cocaine and to smoke marijuana-the marijuana as frequently as once per week.

Circa 1992, alcohol became Applicant's new substance of choice. As his marijuana use declined to a few times per year on special occasions and his cocaine use limited to "every now and then," Applicant found himself drinking more. His alcohol consumption, which had been at the rate of a few beers after work and a six-pack on weekends since age eighteen, became a problem. Within a year or two of his 1994 divorce, Applicant had developed a drinking habit of six to eight beers and a pint of brandy per occasion.

In October 1996, Applicant was laid off from his job with company A. Over the next two years, he worked as a fabricator for commercial entities as he continued to abuse alcohol regularly and marijuana and cocaine sporadically to the 1998/99 time frame. [\(2\)](#) In September 1998, he was recalled to company A, where he was granted a Confidential security clearance. He was on the job for only three months. After a couple of months of unemployment, Applicant found work as a carpenter and later iron worker in the commercial sector.

After work on a Friday in October 1999, Applicant consumed four or five beers at his home before going to a friend's house, where he consumed two more beers. At the friend's request, Applicant drove him to a local bar where the friend purchased a quarter gram of cocaine. En route to a state park, Applicant stopped and purchased a six-pack of beer. Once at the park, his friend began to snort the cocaine and Applicant planned to drink another beer when they were stopped by a park ranger. The park ranger called the police when he noticed Applicant's friend attempt to toss cocaine out the window. Applicant failed a breathalyzer, and was arrested for driving while impaired and possession of narcotics (cocaine). [\(3\)](#) He was convicted of both charges and fined \$600.00, ordered to participate in alcohol and drug counseling

and to perform community service, and his driver's license was suspended for 120 days. This arrest confirmed Applicant's resolve not to have any further involvement with cocaine.

On an occasion in mid-February 2000, Applicant was stopped by local law enforcement for running a red light. After a check of registry records revealed he was operating on a suspended license, Applicant was arrested for that offense and cited for running a red light. During a search of Applicant's vehicle incident to his arrest, a brownish-green leafy substance was found in the center console of the dashboard. A field test was positive for nine grams of marijuana, and a charge of misdemeanor possession of marijuana was added. Applicant pleaded nolo contendere to the marijuana and operating under suspension charges. (4) The drug count was filed for one year after payment of court costs and a \$200.00 contribution to a victim's crime fund, and he was fined \$250.00 with no loss of license for driving with license suspended.

Pursuant to court-order for the October 1999 drunk driving offense, Applicant was evaluated in early March 2000 at a local alcohol treatment facility (treatment facility B). He was required to participate in a fifteen-week alcohol program, which he attended from mid-August 2000 to December 2000. Shortly after he started the facility's alcohol program, he was evaluated as ordered by the court and placed in an eight-week drug education program, which he completed in October 2000.

In March 2000, Applicant was rehired by company A as a shipfitter, where he was granted a Confidential security clearance based on an August 1987 background investigation. While Applicant had ceased his illegal drug involvement by the time he returned to work at company A in March 2000, he continued to drink alcohol to abusive levels.

In conjunction with his employer's request that his clearance be upgraded to Secret, Applicant executed on August 9, 2000, a security clearance application (SF 86). In response to question 24 regarding alcohol/drug offenses, Applicant listed the October 1999 drunk driving and possession of narcotics offenses. He did not disclose his February 2000 possession of marijuana, to which he had pleaded nolo. Applicant responded negatively to question 27 concerning any illicit substance abuse in the seven years preceding his clearance application and to question 28 asking whether he had ever used any illegal drug while possessing a security clearance. Applicant was granted his Secret clearance in late October 2000.

By April 2001, Applicant was imbibing twelve beers and shots of liquor on a daily basis. Concerned that he was drinking too much, Applicant contacted the employee assistance program at work for a referral to a local treatment program. In mid-April 2001, he entered an alcohol treatment program at treatment facility B. Two weeks later, he was administratively discharged from the program with a diagnosis on Axis I of alcohol dependence, unchanged, and cocaine abuse, early full remission. His prognosis for remaining abstinent was assessed as poor to fair, as Applicant had little motivation to remain abstinent.

En route home from the treatment facility, Applicant was in an accident. (5) After his truck was towed away, Applicant went to a bar where he consumed alcohol. He resumed his prior drinking habits. With his job in some jeopardy because of his drinking, Applicant in early June 2001, admitted himself into treatment facility B's inpatient alcohol rehabilitation program. Applicant completed the thirty-day rehabilitation program, and in early July 2001 was discharged with a diagnosis on Axis I of alcohol dependence-early remission. Aftercare plans included Alcoholics Anonymous (AA) meetings.

For about six months after his discharge, Applicant attended AA meetings on Sundays. He did not obtain a sponsor and was not active in step work, and resumed drinking alcohol at a rate of two to three days per week.

On March 14, 2002, Applicant was interviewed by a Defense Security Service (DSS) special agent about his involvement with alcohol and illegal drugs. As reflected in a signed, sworn statement taken during that interview, Applicant provided details about his October 1999 drunk driving and cocaine possession offense, but he falsely denied any other alcohol or drug related arrests. With regard to his alcohol use, Applicant reported his drinking became excessive after his divorce in 1994, which led him to enter treatment facility B's program in April or May 2001. Applicant described his relapse after his discharge, and admission into the facility's 30-day inpatient alcohol rehabilitation program. With respect to his current consumption, Applicant stated:

Since I completed that treatment, I only drink two or three times weekly up to about five beers which only affects me by making me feel sleepy. I don't drive any more if I have been drinking any alcohol. In the future I don't plan to increase my consumption of alcohol and will probably keep my alcohol consumption to what I am drinking now.

Applicant admitted using marijuana on a regular basis ("a few times a week) from about age 15 to ten years before the interview. Since then, he had used marijuana "a few times a year on special occasions, the last time about new year's eve about three years ago." Applicant indicated he used speed a few times in his late teens and cocaine from his late teens until around the time of his arrest in 1999. Applicant denied any intent to use marijuana, cocaine or speed in the future. Confronted with the fact he had omitted his illegal drug involvement from his SF 86, Applicant falsely claimed he thought he had answered "Yes" to the inquiries and any negative response was due to a misunderstanding of the question.

As of December 2002, Applicant was imbibing on occasion as many as five beers at a sitting. Although he considers himself to be an alcoholic and acknowledges he had been told by counselors at treatment facility B that he should abstain from alcohol, Applicant keeps beer in his refrigerator and sees nothing wrong with him drinking alcohol in moderation.

Applicant denies any intent to use any illegal drug in the future. He continues to associate on occasion with individuals who use marijuana.⁽⁶⁾ He does not think these friendships make him vulnerable to relapse. Applicant was offered some marijuana during a cookout held in May 2002. He declined the offer.

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 criterion 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 H

Drug Involvement

E2.A8.1.1. *The Concern:*

E2.A8.1.1.1. 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.A8.1.1.2. Drugs are defined as mood and behavior-altering substances, and include:

E2.A8.1.1.2.1. 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); and

E2.A8.1.1.2.2. Inhalants and other similar substances

E2.A8.1.1.3. 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.A8.1.2. Conditions that could raise a security concern and may be disqualifying include:

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

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

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

E2.A8.1.3.1. The drug involvement was not recent

E2.A8.1.3.3. A demonstrated intent not to abuse any drugs in the future

GUIDELINE G

Alcohol Consumption

E2.A7.1.1. 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.A7.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A7.1.2.1. 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.A7.1.2.5. Habitual or binge consumption of alcohol to the point of impaired judgment

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

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

GUIDELINE E

Personal Conduct

E2.A5.1.1. 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.A5.1.2. Conditions that could raise a security concern and may be disqualifying also include:

E2.A5.1.2.2. 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.A5.1.3. Conditions that could mitigate security concerns include:

None.

GUIDELINE J

Criminal Conduct

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

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

E2.A10.1.1. Allegations or admission of criminal conduct, regardless of whether the person was formally charged

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

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

None.

* * *

Under the provisions of 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 criterion 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 evidence of record in light of the appropriate legal precepts and factors, I conclude the following with respect to guidelines H, G, E and J:

A weekly user of marijuana from age fifteen, Applicant became a polysubstance abuser in his late teens, when he began involvement with cocaine and tried amphetamines. Throughout his twenties, Applicant continued to smoke marijuana twice weekly and to snort cocaine monthly on average. While Applicant's abuses of marijuana and cocaine declined in frequency to sporadic ("every now and then") during the 1990s, his involvement continued after he had been granted a security clearance for his defense-related employ. When interviewed by a DSS agent in March 2002, Applicant reported a last use of marijuana at a New Year's Eve party about three years earlier, and cocaine use sometime in 1999 prior to his arrest in October of that year. Applicant was convicted of possession of cocaine in October 1999, and in February

2000, he pleaded nolo contendere to possession of marijuana after nine grams of the drug were found in the console of his vehicle. Although there is no evidence Applicant smoked marijuana on that occasion, it stretches credulity he was unaware the drug was in his truck. Clearly, neither his defense-related employment nor the laws against use of controlled dangerous substances deterred Applicant from activity which he found personally pleasurable. Moreover, Applicant's illegal drug use has security implications which go beyond the issue of drug-related mental and/or physical impairment which could negatively impact his ability to safeguard classified information. Perhaps because Applicant feared disclosure of his illegal drug use could cost him his clearance and/or defense-related job, he falsely denied any drug use when he completed his SF 86 in August 2000. Applicant may not have been aware of the Department of Defense's zero tolerance policy regarding illicit drug use, but he recognized his employer and the Government would not look favorably on his illegal drug involvement. Consideration is warranted of disqualifying conditions E2.A8.1.2.1., any drug abuse, and E2.A8.1.2.2., illegal drug possession, including purchase, under guideline H.

The Directive provides for mitigation of illegal drug involvement if the drug use was not recent (E2.A8.1.3.1.), it was isolated or aberrational (E2.A8.1.3.2.), there is demonstrated intent not to abuse any drugs in the future (E2.A8.1.3.3.), or satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional (E2.A8.1.3.4.). Strictly in terms of the passage of time, his drug involvement is not especially recent. Applicant's experimentation with amphetamines was confined to his youth. Applicant's abuses of cocaine and marijuana are contrasted by their frequency and duration, but there is no evidence of any involvement (including illegal possession) with illegal drugs since mid-February 2000. However, a determination as to the risk of relapse must take into account not only the date of last use, but also the extent and duration of involvement and the circumstances of use. The more serious or long term the abuse, the stronger the evidence of rehabilitation must be to overcome the negative security implications of that conduct. For more than twenty years, Applicant saw no problem with the recreational use of marijuana and cocaine, despite its illegality. Although Applicant reported a waning interest in the drugs after the birth of his daughter in 1987, he continued to use the drugs on occasion. Applicant bears a particularly heavy burden to demonstrate not only that he has abstained from illegal drugs, but that he will not relapse into the abuse of marijuana and/or cocaine in the future.

When Applicant was interviewed by a DSS agent in March 2002, he indicated he had no plans to use marijuana in the future out of fear he might lose his security clearance. He denied any intent to use cocaine in the future, as although he had "pretty much decided to stop" his use of cocaine before his arrest in October 1999, his arrest for illegal possession "brought the point home to [him]." At his hearing, he testified he "just discontinued" his cocaine use, as it wasn't part of his life. For appropriate consideration of E2.A8.1.3.3. (there is demonstrated intent not to abuse any drugs in the future), it is not enough that one state an intent to forego any future drug involvement; the intent must be demonstrated by concrete actions taken in reform. There is no evidence Applicant has been around cocaine or sought it out since October 1999. Notwithstanding his long history of cocaine abuse, there is seen little risk of him using cocaine or amphetamines in the future, so favorable findings are returned as to subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., and 1.k. of the SOR.

There is an unacceptable risk of Applicant using marijuana in the future, however. His arrest for possession of narcotics (cocaine) had no impact on his attitude toward marijuana, as evidenced by his subsequent possession of marijuana in his truck in February 2000. He continues to associate with known users of marijuana, and was offered marijuana as recently as May 2002. While there is no evidence he used marijuana on that occasion, questions persist about his reform because of his failure to recognize the need to remove himself from situations which pose a risk of relapse. Applicant testified to seeing no problem with being around "a couple of guys watching a football game [who will] smoke a joint or a pipe or something like that." Applicant claims to have told his friends he does not care for the drug, but his history suggests otherwise. Applicant having failed to demonstrate that his lifestyle is no longer conducive to involvement with marijuana, adverse findings are returned with respect to subparagraphs 1.g., 1.h., 1.i. and 1.j. of the SOR.

With respect to guideline G, alcohol consumption, Applicant began to drink heavily following his divorce in 1994. A conviction of driving while impaired in October 1999 and a court-mandated fifteen-week alcohol education program in 2000 had little positive impact on his consumption. By April 2001, he was drinking in quantity of twelve beers and shots on a daily basis and experiencing withdrawal symptoms. Following a brief two-week attempt at rehabilitation in April 2001, Applicant was administratively discharged from treatment facility B's outpatient program with a poor to fair prognosis as he had little motivation to remain abstinent. Clearly, Applicant had developed a serious alcohol problem, as he relapsed into abusive levels immediately on his discharge. Although there is no evidence of an alcohol-related

incident at work, alcohol treatment facility B's records reflect Applicant's job was in some jeopardy. On review of the adjudicative guidelines pertinent to alcohol consumption, disqualifying conditions E2.A7.1.2.1. (alcohol related incidents away from work) and E2.A7.1.2.5. (habitual or binge consumption to the point of impairment) are pertinent. Although Applicant was diagnosed as suffering from alcohol dependence by treating personnel at the alcohol rehabilitation program, the record does not confirm those rendering the diagnosis were either credentialed medical professionals or licensed clinical social workers, which is required for consideration of E2.A7.1.2.3. or E2.A7.1.2.4., respectively.

To Applicant's credit, he sought admission to treatment facility B's thirty-day inpatient program in early June 2001, after a month-long relapse. His initial objective in treatment was to understand the dynamics of addiction, its progression, and the medical consequences of abusing alcohol. Applicant completed all pro-recovery groups and individual counseling, and was discharged with a diagnosis of alcohol dependence-early remission. Applicant has not displayed the same commitment to his recovery since his discharge, however, raising doubts as to the extent of his reform. Although Applicant attended AA on Sundays for six months following his discharge, he was not actively involved in step work. There is no evidence he obtained a sponsor in AA. Advised by his counselors at treatment facility B that he should abstain completely from alcohol, Applicant resumed drinking beer in quantity of up to five beers at a sitting. Exhibiting little insight into the risk that presents, Applicant intends to continue to consume alcohol at that level. Unable to conclude with a reasonable degree of certainty that Applicant's alcohol abuse is safely behind him, adverse findings are returned with respect to subparagraphs 2.a., 2.b., 2.c., 2.d., 2.e. and 2.f. of the SOR.⁽⁷⁾

Applicant's lack of candor about his illegal drug involvement raises independent security concerns under personal conduct. When Applicant completed his SF 86 in August 2000, he falsely denied that he had used any illegal drug in the last seven years or that he had ever used any illegal drug while possessing a security clearance. With regard to his negative response to question 28 (use while in possession of a clearance) Applicant smoked marijuana and snorted cocaine while he held a Confidential security clearance for his work at company A from August 1987 to October 1996. Applicant was recalled to work by the defense contractor for three months in 1998, and his Confidential clearance was renewed at that point, but there is no evidence that he used any illegal drug during that period. Nor is there any evidence he has used or possessed any illegal drug since his rehire in March 2000. Clearly, however, Applicant's use of cocaine and marijuana when he was working for commercial companies over the 1997 to March 2000 time frame fell within the seven-year scope of question 27 (use of drugs in the last seven years). Furthermore, Applicant also deliberately omitted from the security clearance application his arrest in February 2000 for possession of marijuana. 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 personal conduct), as it could indicate that the individual may not properly safeguard classified information.

By certifying that his statements on his security clearance application were "true, complete and correct to the best of [his] knowledge and belief," Applicant violated Title 18, Section 1001 of the United States Code.⁽⁸⁾ Under guideline J, criminal conduct, the fact that Applicant has never been formally charged with that statute does not preclude its consideration for security purposes, as any criminal conduct is potentially security disqualifying. E2.A10.1.2.1., allegations or admission of criminal conduct, regardless of whether the person was formally charged, must also be considered in evaluating his current security worthiness. Rehabilitation of serious criminal conduct requires a showing of remorse as well as a demonstrated track record of reform. Even though Applicant provided details of his alcohol and drug abuse, including the October 1999 cocaine possession, when he was interviewed by a DSS special agent in March 2002, he did not tell the agent of his arrest in February 2000. To the contrary, Applicant denied any other drug-related arrests. Although the Government is now aware of Applicant's drug use and drug-related offenses, doubts persist about Applicant's candor. When asked by the DSS agent about his negative responses to the drug inquiries on the SF 86, Applicant expressed his belief that he had answered the questions on the form in the affirmative. Yet, he provided me with no evidence to corroborate his claim, despite being given the opportunity. 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. Subparagraphs 3.a., 3.b., 3.c., and 4.c. are concluded against Applicant.

Applicant's criminal possessions of cocaine in October 1999 and of marijuana in February 2000 raise additional guideline J concerns. There is no evidence Applicant possessed any illegal drug for resale or distribution to others. In his case, the risk of recurrence of criminal possession of cocaine is minimized by his cessation of involvement with cocaine

and the absence of any ongoing association with known cocaine users. Whereas Applicant continues to socialize with individuals who use marijuana, the risk of recurrence of criminal possession of that drug cannot be ruled out. Accordingly, a favorable finding is warranted with respect to subparagraph 4.a. but not 4.b. of the SOR.

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 H: AGAINST 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

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: Against the Applicant

Subparagraph 1.k.: For the Applicant

Paragraph 2. Guideline G: 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.: Against the Applicant

Subparagraph 3.c.: Against the Applicant

Paragraph 4. Guideline J: AGAINST THE APPLICANT

Subparagraph 4.a.: For the Applicant

Subparagraph 4.b.: Against the Applicant

Subparagraph 4.c.: 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.

Elizabeth M. Matchinski

Administrative Judge

1. At his hearing, Applicant testified to his involvement with marijuana and cocaine being less in quantity and duration than what he had reported to the DSS agent in a March 2002 interview. With regard to marijuana, Applicant had told the agent he used that drug "regularly from about age 15 until about ten years ago" (*see* Ex. 2), while at his hearing he expressed his belief he used marijuana to about 1985. He then went on to testify he could not recall when he last used marijuana. (Transcript p. 95). As to his cocaine use, Applicant testified he stopped using cocaine in "like 1987 or somewhere in there." (Transcript p. 62). However, he then admitted he did not totally abstain, that he would "every now and then have some [cocaine] with a couple of friends." (Transcript p. 64). Whether or not Applicant used cocaine on the occasion of his arrest for possession in October 1999, it is clear he continued to smoke it after his daughter's birth in July 1987. He signed and swore to the truth of a written statement in which he indicated he snorted cocaine "until around the time I was arrested for the driving while intoxicated and possession of narcotics in 1999." (Ex. 2).
2. Applicant testified he cannot recall when he last used marijuana. In March 2002, he told a DSS agent he last used marijuana on New Year's Eve about three years before. When pressed on the issue, Applicant testified he thought he smoked some marijuana at a friend's house at that New Year's Eve party. (Transcript p. 122).
3. Applicant testified he was unaware his friend had cocaine in his possession until this friend began to use the cocaine in his truck at the park. (Transcript pp. 100-02). Yet, when Applicant responded to the SOR, he admitted he drove the friend to the bar for the purpose of purchasing cocaine. Applicant may not have intended to use cocaine himself, but he knew his friend had purchased cocaine at the bar.
4. Applicant denied at the hearing that the marijuana belonged to him. He testified a friend, who he knew sometimes used marijuana, had stuffed the marijuana inside the console of his truck. ("That also belonged to a friend of mine I was giving a ride to work. He had a little bit in some kind of container or something. That was in my vehicle so I got charged with it, too." Transcript pp. 82, 106-07).
5. Applicant denies he had consumed alcohol prior to the accident. On Applicant's readmission to treatment facility B in June 2001, Applicant's counselor expressed her suspicions that Applicant had been drinking before he got into the accident. (See Ex. 7). However, there is no evidence Applicant was under the influence of alcohol at the time of the accident.
6. "There's a couple of guys watching a football game and they will smoke a joint or a pipe or something like that." (Transcript p. 91).
7. Subparagraph 2.b. is resolved against Applicant because of the alcohol abuse evident in the drunk driving offense. The favorable finding returned as to subparagraph 1.d. is with respect to the criminal drug possession, Applicant having mitigated that conduct through termination of his involvement with cocaine with little risk of recurrence. Similarly, while the same information is alleged in subparagraphs 1.f. and 2.d. as amended, there is no evidence Applicant was involved in cocaine use at the time of his admission while he was actively abusing alcohol, his alcohol problem being the focus of his treatment at the facility and his failure to meet his treatment goals meriting the adverse finding as to 2.d. of the SOR.

8. 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.