

DATE: August 11, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-19461

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esq.

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's use of four kinds of drugs, and the one-time purchase of LSD is mitigated by the isolated nature of the use, the passage of time, and the positive changes in Applicant's lifestyle. Applicant's occasional use of marijuana is also mitigated because Applicant has not used the drug since 2000. Applicant's favorable credibility successfully mitigates her intentional falsification in May 2001, and convinces me that she (1) will not repeat her dishonest conduct in the future, and (2) will not resort to future drug use. Clearance is granted.

STATEMENT OF CASE

On September 20, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, amended by Change 4, April 20, 1999, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked. Applicant filed her answer to the SOR on October 23, 2002.

The case was transferred to me on January 23, 2003. A notice of hearing was issued on April 21, 2003, and the case was heard on May 7, 2003. The Government submitted documentary evidence. Testimony was taken from Applicant. The transcript was received on May 14, 2003.

RULINGS ON PROCEDURE

Following the hearing, Applicant submitted seven character statements which are admitted in evidence as Applicant's Exhibit (AE) A.

FINDINGS OF FACT

The SOR alleges drug involvement (Guideline H) and personal conduct (Guideline E). Applicant admitted all the factual allegations under paragraph 1. Under paragraph 2, she admitted she falsified the security clearance application (SCA) dated May 4, 2001. Her admissions shall be incorporated in the following factual findings: Applicant is 24-years-old and has been employed as a service desk operator for a defense contractor since June 2001. She seeks a secret security clearance.

In March 2001, Applicant (along with several other contestants) entered and won a local radio contest giving her and opportunity to spend an entire week at a popular beach location. During the week, she used small amounts of cocaine on two occasions. (Tr. 14) In December 2000 and January 2001, curiosity prompted Applicant to use ecstasy on two occasions. (Tr. 16) Peer pressure influenced Applicant to use marijuana 10 to 12 times between 1995 and 2000 in a group setting. (Tr. 17) Curiosity and peer pressure played a part in Applicant's use of mushrooms on two occasions while in the 11th grade. (circa 1996)

Applicant used LSD on three occasions between 1995 and 1996 while in high school. She contributed \$5.00 toward the purchase of LSD when she used the drug a third and last time in 1996.

When Applicant filled out the SCA in May 2001, she was not using drugs. Applicant answered "no" to question 24 (drug use question) of the SCA because she did not want to look bad, and decrease her chances of getting a job. After working for her employer for a while, Applicant realized the importance of telling the truth. (Tr. 22)

On March 21, 2002, an Agent from the Defense Security Service (DSS) asked Applicant what drugs she used and Applicant identified the type and the frequency; she also stated she did not intend to use drugs again. (Tr. 29-31) [\(U\)](#) Having observed Applicant's demeanor and conduct during the hearing, I find Applicant's testimony concerning her future intentions to be credible.

Applicant's current house mate does not use drugs. Applicant does not associate with drug users and does not go to places where drugs are used. (Tr. 33)

Over the past nine months, the senior project manager has observed Applicant consistently meet her work requirements. Her coworker has found Applicant to be trustworthy. Three friends who have known Applicant up to four years, complimented her honesty and maturity. Applicant's supervisor for the last two years, believes she displays a high degree of professionalism and responsibility on the job.

POLICIES

Enclosure 2 of the Directive sets forth policy factors which must be given binding consideration in making security clearance determinations. These factors must be considered in every case according to the pertinent criterion; however, the factors are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the entire realm of human experience or that the factors apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Factors most pertinent to evaluation of the facts in this case are:

Drug Involvement

Disqualifying conditions (DC):

1. Any drug use;
2. Illegal drug possession, including purchase.

Mitigating Conditions (MC):

1. The drug involvement was not recent;

2. The drug involvement was an isolated or aberrational event;
3. A demonstrated intent not to abuse drugs in the future.

Personal Conduct

Disqualifying Conditions (DC):

2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

Mitigating Conditions (MC):

2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily.

General Policy Factors (Whole Person Concept)

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

Burden of Proof

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information in the future. The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must establish all the factual allegations under drug involvement (Guideline H), and personal conduct (Guideline E), which raise doubt about a person's judgment, reliability and trustworthiness.

Then, the Applicant must remove that doubt with evidence in refutation, explanation, mitigation or extenuation which demonstrates that the past adverse conduct is unlikely to repeat itself and Applicant presently qualifies for a security clearance.

CONCLUSIONS

Drug abuse or dependence may impair social or occupational functioning, and increase the risk of unauthorized disclosure of classified information. The Government has established a case of drug use under DC 1 of Guideline H. Applicant used cocaine, Ecstasy, marijuana, and LSD. However, her use of psilocybin and LSD ended in 1996, and therefore, is not recent as defined by MC 1. Applicant's one-time purchase of LSD in 1996 is also mitigated by the passage of time. Her use of cocaine and Ecstasy was isolated within the scope of MC 2. While Applicant used marijuana more frequently than the other drugs, C 1 is applicable to remove the security concerns related to her five-year use of the drug.

In addition to her stated intention not to use drugs in the future (MC 1), Applicant has made appropriate adjustments in her lifestyle to reinforce her commitment to remain drug free in the future. First, she lives with a person who uses no drugs. Second, Applicant no longer associates with drug users. Third, Applicant does not frequent settings where drugs are being used.

Behavior that exhibits poor judgment, unreliability or dishonesty, may also demonstrate the individual cannot properly safeguard classified information. On ay 4, 2001, Applicant intentionally falsified her SCA by indicating she had never used drugs. Her false answer falls within the scope of DC 2 of the personal conduct guideline. Her motives for furnishing false information, e.g., not wanting to look bad, and not wanting to jeopardize her chances of being hired, do not eliminate or excuse the intentional nature of her conduct. The security clearance process requires complete honesty by the applicant during all phases of the investigation.

Although the personal conduct guideline lists seven mitigating conditions, only two are pertinent to the circumstances of this case. MC 2 is applicable when the falsification was an isolated event that was also not recent, and where the individual subsequently provides the correct information voluntarily. Although Applicant's falsification occurred only one time, it happened less than two years ago in May 2001, and Applicant's disclosure of the correct information does not satisfy the third element of MC 2. Though Applicant clearly did not come forward with the correct information about her drug history before being confronted with the facts (MC 3), I am persuaded by her credible testimony she was completely forthright in disclosing the full scope of her entire drug history.

Even though I find against Applicant under the personal conduct guideline because the mitigating evidence does not meet the three elements of MC 2 of the personal conduct guideline, a different outcome is warranted after evaluating her behavior under the general factors of the whole person concept. There can be no doubt Applicant's intentional falsification was serious because she tried to mislead the government regarding material information that she probably would not have disclosed had the investigator not come out to her facility, and asked her questions regarding her drug use. Although she was 22 (and not a teenager when she provided the false information), this was her first encounter with a security form. Under these circumstances, I believe Applicant warrants another chance to demonstrate her security suitability based on her reputation of honesty on the job, as well as in her personal life, and the other behavioral changes she has made to sustain her drug freedom. Having reviewed all the evidence from a commonsense viewpoint, I find Applicant's single falsification in May 2001 is mitigated under the under the whole person concept.

FORMAL FINDINGS

Formal Findings required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1 (drug involvement): FOR THE APPLICANT.

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.
- f. For the Applicant.

Paragraph 2 (Personal conduct): FOR THE APPLICANT.

- a. For the Applicant.
- b. 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 Applicant.

Paul J. Mason

Administrative Judge

1. After stating unequivocally she had used no drugs since 2001 and she did not intend to use drugs in the future, Applicant seemed to be less sure with her words of not really knowing about her future drug intentions. (Tr, 30) Having weighed and balanced the statements and testimony indicating her future intentions not to use drugs, I find Applicant was confused and flustered during this segment of her testimony.