

DATE: May 8, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-22292

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant was less than candid as to his past drug abuse on his May 1999 Security Clearance Application (SCA). He said "No" as to past drug use, when in fact he had used marijuana on an at times weekly basis during the period May 1992~August 1994. Clearance is denied.

STATEMENT OF THE CASE

On October 7, 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, 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.

Applicant filed an Answer to the SOR on November 6, 2002.

Applicant elected to have this case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant aterial (FORM) on February 27, 2003. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received his copy on March 4, 2003, and submitted nothing in reply. The case was received by the undersigned for resolution on April 16, 2003. The issue raised here is whether the Applicant's personal conduct militates against the granting of a security clearance. [The Applicant denies the wilful falsification aspect of the allegations.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, and the File of Relevant Material. The Applicant is 49 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant.

Guideline E - Personal Conduct

1.a. In answering question 24 on his May 1999 SCA, the Applicant failed to list a 1980 charge for Suspected Possession of a Controlled Substance (marijuana) (Government Exhibit (GX) 4 at page 7). He did, however, list a 1993 charge for "DUI" (*id*). The Applicant avers, credibly, that "I had the phrase 'The Last 7 Years' stuck in my brain and that is how I answered" (GX 3 at page 1). This is believable, and I find no wilful falsification here. This subparagraph is found for the Applicant.

1.b. In answering question 27 on the same May 1999 SCA, the Applicant knowingly and wilfully failed to disclose any of his past marijuana abuse (GX 4 at page 7). The Applicant "had used marijuana for approx(*sic*) 20 year(*sic*) ages 21~41 on a monthly, sometimes weekly basis" (GX 5 at page 1). He avers that he "simply forgot" (GX 3 at page 1). This is simply not believable. In answer to the prior question, he avers he had the last seven years stuck in his brain (*id*). Question 27 asks about drug usage, to include marijuana, "in the last 7 years." If the Applicant did, in fact, have seven years stuck in his brain, he clearly should have divulged that last two years of his weekly to monthly marijuana abuse. This subparagraph is found against the Applicant.

Mitigation

The Applicant offers little in the way of mitigation.

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. The conditions should be followed in every case according to the pertinent criterion, however, the conditions are neither 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 clearance case presents its own unique facts and circumstances, it should not be assumed that these conditions exhaust the realm of human experience, or apply equally in every case. Conditions most pertinent to evaluation of this case are:

Personal Conduct

Condition that could raise a security concern:

(2) The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . . or similar form . . . ;

Conditions that could mitigate security concerns:

None.

As set forth in the Directive, "[each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.

f. Probability that circumstances or conduct will continue or recur in the future."

The Administrative Judge, however, 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 make out its case under Guideline E (personal conduct), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

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

Personal conduct is conduct involving questionable judgement, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places. If an applicant has demonstrated a lack of respect for the law in his private affairs, there then exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

CONCLUSIONS

The Applicant was not truthful as to his past drug abuse when he filled out his SCA in May of 1999. The second disqualifying condition under Personal Conduct is therefore applicable. It was only more than three years later, when the Applicant executed a sworn statement in October of 2002, that his past drug abuse was divulged. This is clearly not a prompt, good faith effort to correct his falsification; and as such, the third mitigating condition does not apply. The Applicant's lack of candor is clearly of security significance; and as such, Guideline E is found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his personal conduct. The Applicant has thus not met the mitigating conditions of Guideline E, and of Section E.2.2. of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guideline E.

FORMAL FINDINGS

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

Paragraph 1: AGAINST THE APPLICANT

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

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge