

DATE: December 21, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-25009

ECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esq., Department Counsel

FOR APPLICANT

Richard Murray, Esq.

SYNOPSIS

Applicant used cocaine from September 1998 until April 2001, when he entered a treatment program. He was diagnosed with cocaine dependence and manic depression. After completing a course of treatment, Applicant returned to using cocaine. In January 2002, a day after wrecking his own car while under the influence of cocaine, he damaged a rental car while under the influence of cocaine. Applicant received additional treatment for his cocaine dependence from arch to August 2002. Applicant failed to mitigate the drug involvement security concerns and is barred from being granted a security clearance under 10 U.S.C. § 986(c)(2) because of his cocaine addiction. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 7 July 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline H (Drug Involvement) of the Directive. Applicant answered the SOR in an undated writing and elected to have a hearing before an administrative judge. The case was assigned to me on 1 November 2004. On 29 November 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 7 December 2004.

FINDINGS OF FACT

Applicant is a 49-year-old principal professional staff member of a defense contractor. He has been married 27 years. Tr. 14. He is well respected by his colleagues. He was granted a security clearance by the FBI in 1988 and a secret clearance by the Department of Defense in 1991. Ex. 1 at 6.

Applicant's father was an alcoholic and drug addict. Tr. 15. He committed suicide when Applicant was 25 years old. When he became 50 years old, Applicant started to use alcohol heavily. One of the people he drank with introduced him to crack cocaine. He became a "binger"--he would use it for four to five hours a day. Tr. 33. He used cocaine two to four

times a month between 1998 and 2001. He purchased the crack from his "drinking buddies," paying about \$400 a month buying \$20 per rock. Ex. 2 at 2; Tr. 32.

From 24-30 April 2001, Applicant received treatment for conditions diagnosed as cocaine dependence and manic depression by the medical director of a behavioral mental health facility. Answer; Ex. 4 at 1; Tr. 28. The staff at the facility recommended Applicant participate in a 12-step recovery program, attend an after care program, and abstain from using drugs. Nevertheless, Applicant continued to use cocaine. In January 2002, Applicant totaled his car while driving under the influence of cocaine. Tr. 26. The following night, he wrecked a rental car while driving under the influence of cocaine. After the second car wreck, Applicant "couldn't take it and . . . ended up in the emergency ward at the hospital for mental problems." Tr. 33.

On 25 February 2002, Applicant presented himself to a regional hospital because of his drug use. The following day, he was admitted to an intensive outpatient treatment program that required attendance at Alcoholics Anonymous (AA) or Narcotics Anonymous meetings. Applicant completed all phases of the program on 28 August 2002. His chemical dependency counselor recommended he abstain from using cocaine and alcohol and continue his progress in AA.

Applicant is currently taking medications for his manic depression. Tr. 29. He attends at least five meetings of Alcoholics Anonymous (AA) a week. Tr. 34. On 18 November 2004, in preparation for the hearing, Applicant met for two hours with a drug and alcohol counselor from a county health department. The counselor opined that Applicant's cocaine/alcohol dependence was in sustained full remission. Tr. 34-35.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

CONCLUSIONS

In the SOR, DOHA alleged Applicant used crack cocaine from September 1998-March 2001 (¶ 1.a), purchased crack

cocaine (§ 1.b), was treated for cocaine dependence from 24-30 April 2001 (§ 1.c), received intensive outpatient treatment from a drug program from March-August 2002 (§ 1.d), continued to use crack cocaine after being granted a security clearance in April 1991 (§ 1.e), and is disqualified from being granted a clearance under 10 U.S.C. § 986 because of his treatment for drug dependence (§ 1.f). The improper or illegal involvement with drugs raises questions regarding an applicant'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. Directive § E2.A8.1.1.

The Government established by substantial evidence through documents and Applicants admissions each of the allegations in the SOR. Applicant abused the illegal drug cocaine by using it two to four times a month from 1998-2002. DC E2.A8.1.2.1. He also purchased cocaine. DC E2.A8.1.2.2. Applicant was diagnosed and evaluated as being cocaine dependent. DC E2.A8.1.2.3 and E2.A8.1.2.4. And Applicant's use of cocaine occurred after he had held a security clearance for several years and he knew the Government's concern about illegal drug use.

On the other hand, Applicant has demonstrated an intent not to abuse drugs in the future. MC E2.A8.1.3.3. Applicant asserts that his drug use was not recent, ending in 2002. *See* MC E2.A8.1.3.1. But his last use was about the time he filed his SCA that initiated a re-investigation of his security worthiness. I conclude Applicant's drug use was recent and MC E2.A8.1.3.1 does not apply.

The Department of Defense may not grant a security clearance to any person who is an unlawful user of, or is addicted to, a controlled substance such as cocaine. 10 U.S.C. § 986(c)(2). Neither the statute nor decisions by the Appeal Board define the term "addicted to" or comment on whether it is synonymous with a diagnosis of dependence. The American Psychiatric Association does not currently recognize addiction as a specified disorder. Instead, the major substance abuse disorder is labeled "dependence." *See Diagnostic and Statistical Manual of Mental Disorders* at 192-99 (4th ed. Text Revision 2000) (DSM-IV-TR). Dependence under DSM-IV-TR is equivalent to being addicted to--"To cause to become physiologically or psychologically dependent on a habit-forming substance." The American Heritage Dictionary of the English Language (<http://www.bartleby.com/61/6/A0080600.html>) (4th ed. 2000).

Although he contends he is in sustained full remission, Applicant admits he is a recovering addict. It is unclear whether 10 U.S.C. § 986 was meant to prohibit persons who were once addicted to or dependent on controlled substances to be forever barred from being granted a clearance even if they have been clean for many years. But the plain meaning of the language of the statute would suggest that it does.

Regardless, Applicant failed to establish he is in sustained full remission. The diagnosis was rendered without a urinalysis or medical examination. Tr. 34. Under all the circumstances of this case, I find against Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline H: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.e: Against Applicant

DECISION

In light of all of the circumstances of this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

James A. Young

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).