

DATE: June 9, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-33559

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant used cocaine, with varying frequency, from 1986 to 1991. In September of 1991, she was diagnosed as suffering from "Cocaine dependence, continuous." Her prognosis was "Fair with treatment." In September or October of 1998, however, she "started snorting cocaine on a daily basis." This continued until June of 1999. Since her relapse, the Applicant has not completed any drug treatment program, nor has she received a favorable prognosis. litigation is not shown. Clearance is denied.

**STATEMENT OF THE CASE**

On October 2, 2003, 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 or about October 30, 2003.

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 arial (FORM) on January 28, 2004. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received her copy on February 23, 2004, and submitted nothing in reply. The case was originally assigned to another judge in April of 2004, but reassigned to the undersigned for resolution on June 7, 2004. The issues raised here are whether the Applicant's drug abuse militates against the granting of a security clearance. [The Applicant, for the most part, denies the underlying factual basis for the four 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 42 years of age, and is employed by a defense contractor that seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

### Guideline H - Drug Involvement

1.a.~1.b. The Applicant used marijuana "at least eight to ten times from about 1979 through 1983" (Item 6 at page 1). Her more recent drug involvement is with cocaine. She describes her first period of cocaine abuse in the following terms:

I first used cocaine in 1986 when I was at a party with friends. I snorted a line a(*sic*) cocaine. I used it occasionally on holidays or when parties were held throughout the year. I cannot recall my specific use of cocaine, but estimate that I used it at least twelve times yearly from 1986 through 1990. In 1991, I became depressed and started using cocaine more often. I used it two or three times per week on average until I admitted myself into . . . [treatment] (Item 6 at page 1).

The Applicant received treatment from September 5 through September 14 of 1991 (Item 7 at page 1). Her doctor diagnoses the Applicant as suffering, in part, from "Cocaine dependence, continuous" (Item 7 at page 3). Her prognosis was noted as "Fair with treatment" (*id.*). In 1998, however, the Applicant had a relapse (Item 5). She avers the following:

I was drug free until about Sep/Oct 98 when I was in a bad relationship with a man and we were breaking up. I felt a great deal of stress and pressure. I started snorting cocaine on a daily basis in order to escape reality. . . . I hung out with other cocaine users and would chip in money to buy cocaine. At first I spent about \$200.00 per week. . . . Gradually the amount I spend on cocaine declined to about \$20.00 per week and eventually I got it for free from friends. . . . I stopped using cocaine in Jun 99 (Item 5 at pages 1~2).

### Mitigation

The Applicant avers that she does not intend any future drug abuse (Item 5 at page 2).

## **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. Furthermore, 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 H (Drug Involvement), 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 her 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.

The improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. 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 her private affairs, there then exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

## CONCLUSIONS

The Applicant was diagnosed as suffering from "Cocaine dependence, continuous" in 1991. Her prognosis was listed as "Fair with treatment." The third Disqualifying Condition is therefore clearly applicable as there is a "[d]iagnosis by a credentialed medical professional . . . of drug abuse or drug dependence." This diagnosis followed about five years of cocaine abuse. The first and second Disqualifying Conditions are also applicable as there is firstly "drug abuse," and secondly "[i]llegal drug possession, including . . . purchase." Furthermore, I can find no applicable Mitigating Conditions that apply. From September or October of 1998 to June of 1999, a period of about eight months, the Applicant returned to her cocaine abuse, at times on a daily basis. The fact that the Applicant returned to her cocaine dependency after seven years of being drug free, makes her current five years of abstinence too recent to apply the first Mitigating Condition. The fourth Mitigating Condition is also not applicable as it requires the "[s]atisfactory completion of a prescribed drug treatment program . . . without recurrence of abuse." Clearly, that is not the case here. The Applicant Drug Involvement is therefore of present security significance; and as such, Guideline H is found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding her drug involvement. The Applicant has thus not met the mitigating conditions of Guideline H, and of Section E.2.2. of the Directive. Accordingly, she has not met her ultimate burden of persuasion under Guideline H.

## FORMAL FINDINGS

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

Paragraph 1: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. 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