

DATE: October 20, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-05281

ECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate security concerns raised by his drug use, his criminal conduct, and his deliberate falsification of his security clearance application and a signed, sworn statement he provided to determine his security worthiness. 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 26 April 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision—security concerns raised under Guideline H (Drug Involvement), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on 4 May 2004 and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on 10 September 2004. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on 22 September 2004 and responded on 27 September 2004. The case was assigned to me on 12 October 2004.

FINDINGS OF FACT

Applicant is a 33-year-old security guard for a defense contractor.

In August 1990, Applicant and some of his friends were walking through an alley when they were arrested by police for sodomy. Item 6 at 3; Item 9 at 2.

Applicant started using marijuana in 1983, when he was about 12 years old. He started using cocaine in 1986 and became a habitual user. Applicant was a drug addict. In October 1991, Applicant was trying to support his drug habit by

taking persons interested in purchasing cocaine to Applicant's supplier. The supplier would give Applicant "crack" cocaine in return. One of the customers was an undercover police officer. Applicant was arrested, pled guilty to attempting to distribute cocaine, and was sentenced to a year of probation and was required to attend a drug treatment program for six months. Item 6 at 3-4. He stopped using drugs until 1994 when he began smoking crack cocaine. He tried to stop, but always returned to the cocaine. Sometime between 2000 and 2001, he was hospitalized after he overdosed on cocaine. After his release, he used cocaine once or twice, resulting in his hospitalization in January 2002. He asserts he has not used any drugs since then.

Applicant worked on the housekeeping staff of a university. On 13 February 2001, he took a computer keyboard and mouse from the front desk of the main lobby of a campus recreation building. Item 7 at 2. On 14 February 2001, he was notified he was being terminated because of this conduct. *Id.* at 3.

In a statement of history form submitted for his employment, Applicant noted he was fired from the university for cause. Item 5 at 2.

Applicant completed a security clearance application (SCA) on 28 March 2002 in which he claimed his statements were "true, complete, and correct to the best of [his] knowledge and belief and acknowledged that a "knowing and willful false statement could be punished under 18 U.S.C. § 1001. Item 4 at 9. Question 22 asked if, in the previous seven years, Applicant had been fired from a job, quit after being told he would be fired, left by mutual agreement after allegations of misconduct or unsatisfactory performance, or left under other unfavorable circumstances. Applicant answered "yes," stating he left his employment with a university under unfavorable circumstances. *Id.* at 7. Question 24a asked if, in the previous seven years, Applicant had illegally used any controlled substances, to include cocaine. Applicant answered "no." *Id.* at 8.

In a signed, sworn statement made to a Defense Security Service (DSS) agent, Applicant stated he removed computer equipment from the university where he formerly worked without authority. He claimed he took it home to learn computer skills so he could find a better job. Item 6 at 2. Later in the statement, he asserted he "stole the computer . . . to sell it so [he] could buy more drugs." *Id.* at 5.

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

Guideline H--Drug Involvement

In the SOR, DOHA alleged Applicant used cocaine from 1986-2002 (¶ 1.a), used crack cocaine from 1994-2002 (¶ 1.b), was convicted of attempted distribution of cocaine in 1991 (¶ 1.c), received treatment after overdosing on cocaine (¶ 1.d), removed a computer from his workplace to sell it for more drugs (¶ 1.e), continued to use cocaine after being treated for an overdose (¶ 1.f), received treatment in February 2002 after ingesting drugs he bought (¶ 1.g), and used marijuana from 1983-2002 (¶ 1.h). 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 and Applicant's admissions that he abused drugs (DC E2.A8.1.2.1)--by using cocaine and marijuana--and purchased cocaine (DC E2.A8.1.2.2). As there is no evidence of record that Applicant ever received a diagnosis of drug abuse or drug dependence, the other disqualifying conditions do not apply. None of the listed mitigating conditions apply. Although Applicant asserts he intends not to use illegal drugs in the future, based on his past history of recent relapse, MC E2.A8.1.3.3 is not established. Under the circumstances, I find against Applicant on ¶¶ 1.a and 1.h. The other allegations are merely recitation of additional details regarding Applicant's history of the use of cocaine and marijuana. They do not support additional disqualifying conditions. Therefore, I find for Applicant on ¶¶ 1b-1g.

Guideline J--Criminal Conduct

In the SOR, DOHA alleged Applicant was arrested in August 1990 and charged with sodomy (¶ 2.a), convicted of attempted distribution of cocaine in 1991 (¶ 2.b), and violated 18 U.S.C. § 1001 by deliberately falsifying material information on his SCA and statement to the DSS agent (¶ 2.c). It is a criminal offense to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the executive branch of the Government of the United States. 18 U.S.C. § 1001. Security clearances are within the jurisdiction of the executive branch of the Government of the United States. *See Egan* at 484 U.S. at 527. A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1

The Government established by substantial evidence and Applicant's admissions that he was arrested for, and charged with, sodomy; was convicted of attempted distribution of cocaine; and violated 18 U.S.C. § 1001 by deliberately falsifying his SCA. Allegations of serious criminal conduct raises security concerns. DC E2.A10.1.2.1, E2.A10.1.2.2. None of the mitigating conditions listed under the guideline apply. There is no clear evidence of successful rehabilitation. *See* MC E2.A10.1.3.6. I find against Applicant.

Guideline E--Personal Conduct

In the SOR, DOHA alleged Applicant falsified material facts in his SCA by deliberately misleading the Government as to the reason he left his previous employment (¶ 3.a) and omitting reference to his abuse of drugs in the previous seven years (¶ 3.b); and falsified material facts in his signed, sworn statement concerning the reason he removed the computer equipment from his workplace (¶ 3.c). Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government established by substantial evidence and Applicant's admissions each of the allegations. Information concerning the termination of his previous employment and his drug abuse are relevant and material to a determination of his security worthiness. Applicant deliberately omitted or falsified relevant and material facts from his SCA. DC

E2.A5.1.2.2. He also provided misleading and conflicting relevant and material information in his signed, sworn statement. DC E2.A10.1.2.3. But Applicant made a prompt, good-faith effort to correct the falsification. *See* MC E2.A5.1.3.3. I find against Applicant on ¶¶ 3.a and 3.b. But as Applicant corrected his misleading statement as to why he took the computer equipment within a few paragraphs of his false statement, I find for Applicant on ¶ 3.c.

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: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: Against Applicant

Paragraph 2. Guideline J: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Subparagraph 3.b: Against Applicant

Subparagraph 3.c: For Applicant

DECISION

In light of all 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 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).