

DATE: November 13, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 06-11179

## DECISION OF ADMINISTRATIVE JUDGE

JACQUELINE T. WILLIAMS

### APPEARANCES

#### FOR GOVERNMENT

J. Theodore Hammer, Esq., Department Counsel

#### FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant is 47 years old and employed as a nuclear machinist for the same defense contractor for more than 23 years. From June 2002 to September 2002, Applicant purchased and used cocaine. After taking a drug test at work, cocaine was found in his urine, and his employer sent him to mandatory drug counseling. From October 2002 to November 2002, he participated in a drug counseling program. In November 2002, upon satisfactory completion of the program, he was allowed to return to work. Applicant has not used any illegal drugs since his treatment. Since 2004, Applicant has voluntarily attended meetings at Alcoholics Anonymous to participate in their 12-step drug program. Applicant has mitigated the drug and personal conduct security concerns. Clearance is granted.

### STATEMENT OF THE CASE

On December 3, 2003, Applicant applied for a security clearance and completed a Security Clearance Application (SF 86).<sup>(1)</sup> On July 26, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR)<sup>(2)</sup> to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons under Guideline H (Drug Involvement) and Guideline E (Personal Conduct) 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 a clearance should be granted or revoked.

In a sworn, written statement, dated August 8, 2006, Applicant responded to the SOR allegations, and requested an in-person hearing. The case was assigned to me on September 6, 2006. A Notice of Hearing was issued on October 6, 2006, scheduling the hearing for October 24, 2006. The hearing was conducted as scheduled. The transcript (Tr.) was received on November 2, 2006. The record was left open through November 4, 2006 to allow Applicant to submit additional documents. On November 1, 2006, Applicant submitted two documents, marked as Exs. A and B.<sup>(3)</sup> The

Government had no objection to these documents being admitted into the record. Exhibits A and B are hereby admitted.

### FINDINGS OF FACT

Applicant admitted the factual allegations pertaining to drug involvement under Guideline H, subparagraphs 1.a through 1.e, and personal conduct under Guideline E, subparagraph 2.a. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is 47 years old and employed by a defense contractor since April 1983. He now works as a nuclear machinist. He has held a security clearance since November 1983. Applicant has a high school diploma. He has been married for more than 20 years, and has two independent adult children. <sup>(4)</sup>

At the age of 43, Applicant used cocaine, with varying frequency, from about June 2002 to at least September 2002. He purchased cocaine approximately two to five times from about June 2002 to at least September 2002. <sup>(5)</sup> Applicant's use and purchase of cocaine occurred while he was holding a security clearance.

Applicant testified that he was with some friends one weekend, and they decided to use cocaine. <sup>(6)</sup> They went to a friend's home and someone brought out the cocaine. <sup>(7)</sup> He was curious, since he had not used it before, so he tried it. <sup>(8)</sup> He testified that he enjoyed the feeling that he got from the cocaine. <sup>(9)</sup> He stated he did not use cocaine during the week while working, but only used cocaine on weekends. <sup>(10)</sup>

In September 2002, Applicant failed a urine test during a physical examination for another position as a crane rigger <sup>(11)</sup> while employed with his current defense contractor. <sup>(12)</sup> When his employer was informed that cocaine was found in Applicant's urine. Applicant received counseling for cocaine use at the counseling center approved by his employer. <sup>(13)</sup> During the time he was receiving treatment for his cocaine use, he was not allowed to work at his full-time job. Applicant successfully completed the intensive outpatient drug program on November 19, 2002. <sup>(14)</sup> The date of his last negative urine screening was November 28, 2002. <sup>(15)</sup> Upon completion of the drug treatment, which included random urine testing, Applicant was allowed to return to work. <sup>(16)</sup> His coworkers knew he had tested positive for cocaine, as did his wife. <sup>(17)</sup> However, he was embarrassed about his drug use, so he never told his children. <sup>(18)</sup>

Applicant credibly testified that he has not used cocaine since the summer of 2002. <sup>(19)</sup> He also testified that he has not been around other individuals who have used illegal drugs since the summer of 2002. <sup>(20)</sup> Since 2004, Applicant has been voluntarily attending Alcoholic Anonymous (AA) meetings, and participating in the drug program. <sup>(21)</sup> The AA meetings provide him with a 12-step program for drugs, as opposed to alcohol. <sup>(22)</sup>

### POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to

grant or continue a security clearance for an applicant.<sup>(23)</sup> The government has the burden of proving controverted facts.<sup>(24)</sup> The burden of proof is something less than a preponderance of evidence.<sup>(25)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>(26)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(27)</sup>

No one has a right to a security clearance<sup>(28)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(29)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(30)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(31)</sup> 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.

Based upon consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

**Guideline H (Drug Involvement):** *The Concern:* Improper or illegal involvement with drugs, raises questions regarding an individual'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.

**Guideline E (Personal Conduct):** *The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions below.

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards, and I reach the following conclusions.

### **Drug Involvement**

Under Guideline G, a security concern exists for an individual who is improperly or illegally involved with drugs because it raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, while increasing the risk of an unauthorized disclosure of classified information. From June 2002 to at least September 2002, Applicant purchased and used cocaine. Consequently, Drug Involvement Disqualifying Conditions (DI DC) E2.A8.1.2.1 (*any drug abuse*) and DI DC E2.A8.1.2.2 (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*) apply.

Various conditions can mitigate security concerns arising from drug involvement. From June 2002 to September 2002, a limited period of three months, Applicant purchased and used cocaine. He failed a drug test at work. From October 2002 to November 2002, he participated in a drug counseling program. Upon satisfactory completion of the program, Applicant was allowed to return to work. Applicant held a security clearance during the time he used cocaine. He was curious about the effects of cocaine. When some friends offered it, he tried it. Applicant admitted that he liked the way cocaine made him feel, so he tried it several times. However, he knew that his cocaine use was a negative element in his life. The record is devoid of Applicant backsliding and using cocaine since his treatment in November 2002. He has been tested for drug use since 2002, and all tests were negative. He credibly testified that his use of cocaine could have destroyed the lifestyle to which he had become accustomed. Since 2004, Applicant has been voluntarily attending AA for their 12-step program for drugs. Applicant credibly testified he has not used cocaine, or any other drugs in nearly four years, and he does not plan on using any illegal drugs in the future. Enough time has lapsed for Applicant to have demonstrated an intent not to use drugs in the future. Therefore, Drug Involvement Mitigating Conditions (DI MC)

E2.A8.1.2.1 (*the drug involvement was not recent*) and DI MC E2.A8.1.3.3 (*a demonstrated intent not to abuse any drugs in the future*) apply.

## **Personal Conduct**

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Using and purchasing cocaine while holding a security clearance raises a security concern as to the reliability of an applicant. Moreover, a drug test at work revealed Applicant had cocaine in his system. Here, based on the record evidence as a whole, the government established its case under Guideline E, Personal Conduct Disqualifying Condition E2.A5.1.2.1 (*reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*).

Various conditions can mitigate security concerns arising from personal conduct. Since Applicant received treatment for his cocaine use in November 2002, he credibly testified that he has not used, purchased, or been in the company of anyone using cocaine or any other drugs. Since 2004, Applicant voluntarily attends AA meetings to participate in their 12-step drug program. Thus, Personal Conduct Mitigating Conditions (PC MC) E2.A5.1.3.5 (*the individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*) and PC MC E2.A5.1.3.7 (*association with persons involved in criminal activities has ceased*) apply.

I have considered all the evidence in this case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. At age 43, Applicant, a mature individual, decided to experiment with cocaine. By that time, he had a stable work history since 1983, and a stable marriage for more than 20 years. His curiosity got the best of him, and he was jeopardizing what he had accomplished both professionally and personally. Once a urine test disclosed cocaine in his system, Applicant diligently applied himself to treatment, stopped associating with his friends who continued to use drugs, and participated in the AA program for drug users. He credibly testified that he has not used cocaine or any illegal drug in the last four years. I conclude Applicant has mitigated security concerns regarding his drug use and personal conduct. It is clearly consistent with the national interest to grant Applicant a security clearance. For the reasons stated, I conclude Applicant should be granted access to classified information.

## **FORMAL FINDINGS**

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline G (Alcohol Consumption): FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Paragraph 2. Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 2.a: For Applicant

## **DECISION**

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Jacqueline T. Williams

Administrative Judge

1. Gov. Ex. 1 (Security Clearance Application, executed December 3, 2003).
2. Item 1 (Statement of Reasons, dated April 28, 2005).
3. Ex. A (Excerpt from Newport News Shipbuilding Employee Manual, undated); Ex. B (EAP Intake Form, Mandatory Referrals, showing "EAP Certification as Having Successfully Completed" the program on November 19, 2002).
4. Tr. 10-11.
5. Tr. 20, 21.
6. Tr. 13, 17.
7. Tr. 18.
8. *Id.*
9. Tr. 19.
10. Tr. 27-28.
11. Tr. 23-24.
12. Ex. B, *supra*, note 3. Applicant's employer's company policy regarding drug use provides that "[e]ffective February 6, 1995, one period of rehabilitation will be allowed per employee. Subsequent violations will result in immediate termination." Applicant is on notice that he is subject to termination by his employer if he tests positive for drugs in the future.
13. Tr. 25
14. Ex. A, *supra*, note 3.
15. *Id.*
16. Tr. 27-32.
17. Tr. 40-41.
18. Tr. 41.
19. Tr. 36.
20. Tr. 40-41.
21. Tr. 42-43.
22. *Id.*
23. ISCR Case No. 96-0277 (July 11, 1997) at 2.
24. ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.

25. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

26. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.

27. ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.

28. *Egan*, 484 U.S. at 531.

29. *Id.*

30. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

31. Executive Order 10865 § 7.