

DATE: December 30, 1996

In Re:

SSN: -----

Applicant for security clearance

DISCR OSD Case No. 95-0833

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

Appearances

FOR THE GOVERNMENT

Claude R. Heiny II, Esq.

Department Counsel

FOR THE APPLICANT

*Pro se*

STATEMENT OF CASE

On November 3, 1995, 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 Applicant, which detailed reasons under Criterion n, o, h, and i 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 clearance should be denied or revoked. The SOR is attached.

Applicant filed her Answer to the SOR on November 27, 1995.

Applicant elected to have her case determined on a written record in lieu of a hearing. Department Counsel submitted the File of Relevant Material (FORM) on July 25, 1996. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received a copy on August 5, 1996. Applicant's reply was due by September 5, 1996. No reply was received. The case was received by the undersigned for resolution on September 18, 1996.

**FINDINGS OF FACT**

The Following Findings of Fact are based on the documentation and testimony. The SOR alleges drug abuse, willful falsification, criminal conduct, and acts of poor judgment. Applicant admitted all allegations but denied she would provide unprescribed Vicodin to others.

Applicant is 40 years old and is employed by a defense contractor. She seeks a confidential clearance.

Applicant abused several drugs since 1970. Her abuse of marijuana began in 1970. She used the drug from weekly to monthly, and at other regular or sporadic intervals, until approximately July 1995. Her use of marijuana from 1990 to July 1995 was once a month to once every other month. She sold marijuana about 5 times. She tried to cultivate the drug on about 3 occasions until at least 1985. Applicant intends to use marijuana in the future.<sup>(1)</sup> Applicant has abused prescribed and unprescribed Vicodin from 1990 to 1995, and she intends to use the drug or provide the drug to others in the future.<sup>(2)</sup>

Applicant has abused prescribed or unprescribed Valium. She has also purchased Valium without a prescription.

Applicant used Percodan without a valid prescription and abused prescribed Percodan.

Applicant used Tylenol III and Codeine without a valid prescription on about nine occasions in 1988. Applicant used Xanax without a valid prescription until 1988, and abused a prescription for Xanax throughout the 1980s. Applicant purchased Xanax without a prescription.

Applicant used methamphetamines in 1986 and may use methamphetamines in the future. Applicant used cocaine on at least 2 occasions in 1987 and used hashish on a sporadic basis from 1976 to 1985. She abused and sold amphetamines from 1972 to 1985. She also purchased the drug in 1980.

Applicant used and purchased quaaludes from 1972 to 1980, and used and purchased Lysergic Acid Diethylamide (LSD) in 1972.

Applicant intentionally answered in the negative to the drug use and purchase/possession questions on her security form on February 9, 1995. Applicant intentionally falsified question 20c when she replied she only abused Vicodin.<sup>(3)</sup> On July 20, 1995, Applicant intentionally falsified her sworn statement when she stated she last used marijuana in March 1994 and last purchased marijuana in 1990. She also lied when she said she never used or purchased or sold any other drug.

In the attachment to her security form of February 9, 1995, Applicant explained she was involved in a serious traffic accident and sustained an arm injury requiring two surgeries. During her rehabilitation, she was prescribed Vicadone and became dependent on the drug.

Applicant's credibility is dramatically weakened by her intentional falsifications in February and July 1995 and also by her intention to use illegal drugs and Vicodin in the future. However, her use of some drugs is mitigated by the short-lived frequency of use or the passage of time.

## **POLICIES**

Enclosure 2 of the Directive set forth policy factors which must be given binding consideration in making security clearance determinations. These factors must be considered in every case according to the pertinent criterion; however, the factors are in no way 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 case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the entire realm of human experience or that the factors apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Factors most pertinent to evaluation of the facts in this case are:

### **Drug Abuse**

#### **Factors Against Clearance:**

1a. Occasional abuse, defined not more than once a month.

2e. Compulsive use, habitual use, physical or psychological dependency, or use on an average of once a day or more on the average.

3. Involvement to any degree in the unauthorized distribution of any narcotic.

5. Information that the individual intends to continue to use any narcotic or Cannabis. (There is no corresponding mitigating factor for this disqualifying factor because it is DoD policy that, as a general rule, if any individual expresses or implies any intent to continue to use any drug, without a prescription, in any amount and regardless of frequency, it is to be considered contrary to the national interest and the interest of national security to grant or allow retention of a security clearance for access to classified information for that individual.

Factors for Clearance:

None.

**Falsification**

Factors Against Clearance:

1. Deliberate omission of a security form to determine security clearance access.

2. Deliberately providing false information concerning any relevant and material matters in connection with application for security clearance.

Factors for Clearance:

None.

**Criminal Conduct**

Factors Against Clearance:

Felony policy.

Factors for Clearance:

None.

**Poor Judgment**

There are no supplemental policy factors for Criterion i, however, a person's conduct under another criterion may also constitute poor judgment, unreliability and untrustworthiness.

**General Policy Factors**

Every case must be ultimately evaluated under general policy factors located at Section 3, page 7 of the Directive to determine the likelihood of recurrence in the future.

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information in the future. The Administrative Judge 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 establish all the factual allegations under Criterion h (criminal conduct), Criterion o

(falsification), Criterion n (drug abuse), and Criterion i (acts of omission or commission indicative of poor judgment, unreliability and untrustworthiness) 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 the 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 repeat itself and Applicant presently qualifies for a security clearance.

## **CONCLUSIONS**

Drug abuse under Criterion n is defined as the illegal use, possession, transfer or sale of any kind of drug. Applicant has used a laundry list of drugs. Her use of drugs started in approximately 1970 when she began using marijuana. Applicant purchased the drug from 1971 to about 1993. Her last use was July 1995 and she admitted she intends to use the drug in the future. Applicant's drug abuse is exacerbated by the fact she has abused and will continue to abuse prescribed medication. For example, she intends to abuse Vicodin and/or distribute the drug to others in the future. Her intention to abuse any illegal drug (including methamphetamines) or any prescribed drug in the future is contrary to the government drug policy prohibiting drug use.

Criterion o addresses deliberate falsifications of relevant and material information from a security form or from a sworn statement. On February 9, 1995, Applicant intentionally concealed the entire history of her drug abuse by denying she had ever used or purchased any drugs. She also failed to provide the complete picture of her abuse of prescribed medications. Her claim she was afraid of the consequences on her job and/or obtaining a security clearance does not justify or mitigate her intentionally dishonest conduct.<sup>(4)</sup> Her falsifications in February 1995, together with her intentional falsifications of her drug history in her sworn statement of July 20, 1995, establish the Government's case under Criterion o.

Falsifying a Federal Government document, whether the document is a security form or a sworn statement, constitutes criminal conduct under 18 USC 1001. The felony policy calls for the revocation or denial of a security clearance unless clear and convincing evidence demonstrates compelling reasons why the security clearance should be granted or continued. To overcome the application of the felony policy, an applicant must demonstrate through strong evidence that he or she warrants a clearance. Applicant has failed to make even a threshold case to favorably consider her for access to classified information.

The general policy factors have been considered. However, given (1) Applicant's drug history, (2) her intention to use drugs in the future, and, (3) the pattern of falsifications in February and July 1995, Applicant has offered very little evidence to rehabilitate her intentional misconduct and other acts of poor judgment to justify a conclusion she qualifies for security clearance access.

## **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.
- e. Against the Applicant.

- f. Against the Applicant.
- g. Against the Applicant.
- h. Against the Applicant.
- i. Against the Applicant.
- j. Against the Applicant.
- k. Against the Applicant.
- l. Against the Applicant.
- m. Against the Applicant.
- n. Against the Applicant.
- o. For the Applicant.
- p. For the Applicant.
- q. For the Applicant.
- r. For the Applicant.
- s. Against the Applicant.
- t. Against the Applicant.
- u. For the Applicant.
- v. For the Applicant.
- w. For the Applicant.
- x. For the Applicant.
- y. For the Applicant.
- z. For the Applicant.
- aa. For the Applicant.
- bb. For the Applicant.
- cc. For the Applicant.
- dd. For the Applicant.

Paragraph 2: AGAINST THE APPLICANT.

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

c. Against the Applicant.

Paragraph 3: AGAINST THE APPLICANT.

a. Against the Applicant.

Paragraph 4: AGAINST THE APPLICANT.

Factual support and reasons for the foregoing findings are set forth in FINDINGS OF FACT and CONCLUSIONS above.

### **DECISION**

In light of all 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.

Paul J. Mason

Administrative Judge

1. In her sworn statement of July 20, 1995, Applicant stated she never concealed her marijuana use from her children and also told them marijuana and other illegal drugs is no good and their life is better without drugs.
2. In her Answer, Applicant denies she will provide the Vicodin to others. However, because of her intentional falsifications on her security form and in her sworn statement, her denial of subparagraph 1i is not persuasive.
3. Although she admitted on the security form she had misused or abused a drug prescribed by a physician, she did not furnish the entire history of all the prescribed drugs she abused.
4. If a person is willing to lie to protect an actual or expected interest, they may be willing to subordinate security rules and regulations to their special interest, and in turn, carry out some action contrary to the national interest.