

DATE: January 22, 1997

In RE:

SSN: -----

Applicant for security clearance

ISCR OSD Case No. 96-0104

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

Appearances

FOR THE GOVERNMENT

Carla Conover, Esq.

Department Counsel

FOR THE APPLICANT

Pro se

STATEMENT OF CASE

On April 5, 1996, 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 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 his Answer to the SOR on May 24, 1996.

The case was received by the undersigned on June 17, 1996. A notice of hearing was issued on July 15, 1996, and the case was heard on August 7, 1996. The Government submitted documentary evidence. Testimony was taken from Applicant. The transcript was received on August 14, 1996.

RULINGS ON PROCEDURE

At the hearing, the Government moved to amend 2b by changing the enumerated citations to 2a(1), 2a(2), through 2a(10). In addition, the reference in subparagraph 2d of 1c should be changed to 2c. Under subparagraph 2e, the enumerated references should actually read 2c(5), 2c(6), 2c(7), 2c(8), 2c(9), 2c(10), 2c(11), and 2c(12). The motion was granted.

FINDINGS OF FACT

The Following Findings of Fact are based on Applicant's Answer, the documentation and testimony. The SOR alleges Criterion H (illegal involvement with drugs) and Criterion E (conduct involving questionable judgment). In his Answer,

Applicant admitted most of the allegations except for subparagraphs 1f and 1j (alleging the purchase of amphetamines and mushrooms), and also subparagraphs 2a(6) and 2a(10), 2b(6) and 2b(10), also referring to the purchase of amphetamines and mushrooms. ⁽¹⁾

Applicant is 35 years old and employed by a defense contractor. He seeks a secret level clearance.

Applicant used marijuana once a week from 1976 to June 1984. He used the drug less between 1984 and 1992 because he was in the military. But, from December 1992 until December 19, 1995, he used marijuana about once a week with periods of up to six months of abstinence. Applicant cultivated marijuana on at least three occasions. He used acid about five times between 1977 and June 1979. He also purchased acid and mushrooms. He last used acid in 1990. Applicant continued using marijuana after receiving his security clearance in February 1995. ⁽²⁾

In his sworn statement of December 20, 1995, and at the hearing, Applicant admitted intentionally falsifying interviews in November 1986, August 1995, and a sworn statement on September 26, 1995, by providing no information or less than the full picture of his drug use over the years. ⁽³⁾ He also admitted falsifying security forms of July 1986 and January 10, 1995. In Government Exhibit #4, Applicant tried to maintain consistency by always denying he had ever used drugs, and, he did not want to lose his job or his clearance. ⁽⁴⁾ Although no defense contractor ever told Applicant about a drug policy, he knew that having a clearance meant not using drugs. (Tr. 26-27). He explained, "...I just really didn't know how to go about changing everything [revealing drug use] without putting my job in jeopardy and keeping food on the table." (Tr. 23).

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:

Criterion H (Drug Involvement)

Factors Against Clearance:

1. Any drug use.
2. Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.

Factors for Clearance:

None.

Criterion E (Personal Conduct)

Factors Against Clearance:

2. the deliberate omission of relevant and material facts from any personnel security questionnaire...to...determine security clearance eligibility....
3. deliberately providing false or misleading information concerning relevant and material matters...in connection with a personnel security or trustworthiness investigation.

Factors for Clearance:

None.

General Policy Factors (Whole Person Concept)

The facts of every security clearance case must be evaluated under the factors making up the whole person concept including: (1) the nature, extent and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) The individual's age and maturity at the time of the conduct; (5) the presence or absence of rehabilitation; (6) other pertinent behavioral changes; and, (7) the likelihood of continuation or recurrence.

Burden of Proof

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 (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 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

Criterion H is defined as improper or illegal drug involvement which raises questions regarding an individual's willingness or ability to protect classified information. The Government has established a case under Criterion H as Applicant's involvement with drugs from 1976 to the end of 1995 casts a pall over Applicant's judgment, reliability and trustworthiness. Applicant's drug involvement is aggravated by the fact he continued using drugs even after he was granted a security clearance in February 1995. In addition, he continued to purchase marijuana on a fairly regular basis until September 1995.

While Applicant may have occasionally abstained from drug use for limited periods of time, it is reasonable to infer he was not trying to give up marijuana use in these periods of abstinence. Generally, his drug use was relatively continuous and did not end until at least December 1995. Applicant's use of drugs after receiving a security clearance in February 1995 raises serious doubt about his recently stated intention to forego future use because if he is willing to intentionally violate the Government drug policy and the law, he may be willing to ignore security responsibilities that do not accommodate his objectives.

Applicant's history of drug involvement is compounded by the fact he intentionally omitted all or part of his drug use on five different occasions between 1986 and September 1995. Furnishing false information to the Government on 5 separate occasions over a nine year period steadily chips away at Applicant's overall credibility.

Applicant's effort to be consistent by denying any drug use as advised by the military recruiter in 1983 may have constituted an excusable explanation for intentionally providing false information to the Government in 1986 had there been no evidence of similar intentional conduct since 1986.^(S) However, Applicant repeated his dishonest conduct not only in January 1995 but also in August and September 1995. Applicant's pattern of intentional falsifications to the Government raises a reasonable inference that Applicant may resort to same kind of conduct in the future when faced with a choice of telling a lie or telling the truth. The lack of trustworthiness disqualifies Applicant from security

clearance consideration.

Applicant's desire to keep his clearance and/or his job does not justify intentionally providing false information during the course of a security investigation. Every security aspirant is duty bound to furnish truthful information during all phases of a security investigation.

Given Applicant's drug use for about 19 years, his repeated efforts to hide his drug history from the Government until December 1995, and his continued drug use after receiving a clearance, Applicant's negligible evidence in mitigation and extenuation is insufficient to warrant access to classified information.

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. For the Applicant.
- g. For the Applicant.
- h. For the Applicant.
- i. For the Applicant.
- j. For the Applicant.
- k. For the Applicant.
- l. For the Applicant.
- m. Against the Applicant.

Paragraph 2: AGAINST THE APPLICANT.

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. 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. Applicant's statements at the hearing denying he purchased amphetamines and mushrooms are not persuasive because of his pattern of intentional falsifications of most of his other drug use and his unequivocal statements in Government Exhibit #4 indicating he purchased both amphetamines and mushrooms.
2. Applicant's drug involvement with amphetamines, LSD, and mushrooms is mitigated by time and pales in comparison to Applicant's regular use of marijuana, his apparent drug of choice, for about 19 years. Hence, the other drugs shall be found in Applicant's favor.
3. The threat of a lie detector test before supplying his sworn statement on December 20, 1995 convinced Applicant to probe his past more closely for drug use. (Tr. 36).
4. A military recruiter told him to always deny he had ever used drugs, but even with this advice, he used drugs infrequently while in the service. (Tr. 25).
5. The desire to perpetrate a false picture to keep material and relevant information from the Government cannot qualify as a justification for lying to the Government.