

DATE: November 20, 1996

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 96-0105

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR THE GOVERNMENT

Matthew E. Malone

Attorney-Advisor

FOR THE APPLICANT

Pro se

STATEMENT OF THE CASE

On 19 April 1996, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 13 May 1996, Applicant answered the SOR and requested an administrative decision on the record. Applicant did not respond to the Government's File of Relevant Material (FORM)--issued 18 June; the record in this case closed 26 July 1996, the day the response was due at DOHA. I received the case on 21 August 1996 to determine whether clearance should be granted, continued, denied or revoked.

The SOR is attached to this Decision and incorporated by reference.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR, except that he denied alcohol abuse after 1991 (subparagraph 2.a.) and denied falsifying his April 1995 sworn statement (subparagraphs 3.a. and 4.b.); accordingly I incorporate the admissions as findings of fact.

Applicant is a 38-year old employee of a defense contractor seeking a secret clearance.

Applicant has an extensive and intense history of drug and alcohol abuse. He first tried cocaine in January 1988, and used it nearly daily until June 1990. During this time, he used marijuana almost daily as a means of coming down from the cocaine high. He purchased and sold cocaine to support his habit, in violation of state and federal law (Items 15, 16, 17, 18, 19): Applicant fronted \$600.00 a week to a friend to buy one ounce of cocaine; the friend would sell one-half

ounce of cocaine for \$500.00 and then give Applicant the \$500.00 and one-half ounce of cocaine for Applicant's personal use. Between January 1988 and June 1990, Applicant estimates he fronted \$2,440.00 per month for cocaine purchases, and netted \$76,000.00. Applicant used the profits to buy more cocaine for his personal use. He also purchased marijuana for his personal use, spending about \$25.00 a week during the same period he was using cocaine. (FORM, Item 5).

In June 1988, Applicant attended group therapy three times a week for his drug abuse; however, he continued to use drugs. On 29 July 1988, Applicant entered inpatient treatment for chemical dependence, remaining until 8 September 1988. During his stay, he left the hospital once and used marijuana (FORM Items 9, 10). Although he was discharged from the hospital in satisfactory condition, the discharge summary reported only moderate commitment to recovery. Applicant quickly relapsed into alcohol and cocaine abuse. On 4 November 1988, Applicant was re-admitted to inpatient treatment for chemical dependence and alcohol abuse, and was discharged 12 November 1988 (Items 11, 12). At the time of his admission to the hospital, he reported being fired from his job ten days before admission for failure to follow his aftercare program. After his release from the hospital, he quickly relapsed into cocaine and alcohol abuse; on 18 November 1988 Applicant was admitted a third time to inpatient treatment for chemical dependence (mixed cocaine and marijuana) and alcoholism. Applicant was detoxified and began a full treatment program; however, on 26 November 1988 he left the program against medical advice. Prognosis: very poor. (Item 13).

Applicant continued to abuse cocaine, marijuana, and alcohol until June 1990, when he claims to have stopped without outside assistance. He claims to have remained drug free from June 1990 to May 1991. From May 1991 to August 1991, Applicant used cocaine daily. He then stopped, again on his own, and claims to have been drug-free since August 1991.

On 18 November 1991, Applicant was terminated from his job (Item 8) effective 19 November 1991, for failure to report back from a leave of absence that Applicant took because of his drug abuse.⁽²⁾

On 10 December 1994, Applicant executed a Personnel Security Questionnaire (PSQ)(DD Form 398)(Item 4) and answered "yes" to two questions designed to elicit his drug abuse history. However, he failed to elaborate his "yes" answer to the question about drug purchases or sales, and thus failed to disclose his purchase and sale of cocaine or his purchases of marijuana. He also misrepresented his drug abuse by stating that he was drug free from 26 November 1988 (the date of release from his last treatment) to May 1991. In a signed, sworn statement executed on 27 April 1995 (Item 7), Applicant understated his cocaine use by suggesting he was drug free from November 1988 until his relapse in May 1991. He also understated his cocaine purchases, estimating them at \$300.00 to \$600.00 per week.⁽³⁾ He falsified this statement by denying any involvement in sale of drugs.⁽⁴⁾ In a sworn statement executed 11 September 1995 (Item 6), Applicant stated that he had never specifically sought treatment for his alcohol abuse; he described his alcohol consumption since July 1988 as moderate, twice weekly consumption of two beers or a few glasses of wine.⁽⁵⁾ He intended to continue consuming alcohol at that rate.

In a sworn statement executed on 24 October 1995 (Item 5), Applicant acknowledged that he deliberately denied selling drugs in his earlier sworn statement because he feared he would not get his clearance. He also acknowledged that his three inpatient treatments were for both drug and alcohol abuse. He acknowledged that benzodiazepine was found in his blood during a blood screening at the hospital in 1988; he had no recollection of using the drug.

Applicant claimed to have an excellent work record, but provided no corroboration of that claim.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

DRUG INVOLVEMENT (CRITERION H)

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.

Conditions that could raise a security concern and may be disqualifying include:

- (1) any drug abuse;
- (2) illegal drug possession, including . . . purchase, sale . . .
- (3) failure to successfully complete a drug treatment program prescribed by a credentialed medical professional.

Conditions that could mitigate security concerns include:

- (1) the drug involvement was not recent.
- (3) a demonstrated intent not to abuse any drugs in the future.

ALCOHOL CONSUMPTION (CRITERION G)

Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

Conditions that could raise a security concern and may be disqualifying include:

- (3) diagnosis by a credentialed medical professional of alcohol abuse or alcohol dependence;
- (5) consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol treatment program.

Conditions that could mitigate security concerns include:

- (2) the problem occurred a number of years ago and there is no indication of a recent problem.

PERSONAL CONDUCT (CRITERION E)

Conduct involving questionable judgment, untrustworthiness, unreliability, 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 include:

- (2) deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;
- (3) deliberately providing false or misleading information concerning relevant and material matters to an investigator, . . . in connection with a personnel security or trustworthiness determination;

Conditions that could mitigate security concerns include:

None.

CRIMINAL CONDUCT (CRITERION J)

A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Conditions that could raise a security concern and may be disqualifying include:

- (1) any criminal conduct, regardless of whether the person was formally charged;
- (2) a single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns include:

- (1) the criminal behavior was not recent.

Burden of Proof

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

The Government has established its case under criterion H. Applicant's extensive history of drug abuse raises serious doubts about his fitness for access to classified information. His use, purchase and sale of cocaine, and his use and purchase of marijuana are inconsistent with the judgment, reliability, and trustworthiness required of those with access to classified information. The severity of Applicant's drug problem and his chemical dependence are well documented in the medical records. He left his last treatment program against medical advice and with a poor prognosis; indeed he quickly relapsed into drug and alcohol abuse. Against these disqualifying factors, Applicant counters with only his uncorroborated claim to have been drug free from June 1990 to May 1991, and--after a severe relapse between May and August 1991 which resulted in Applicant losing his job--after August 1991. Even if I accept Applicant's claim that he has been drug free since August 1991, the passage of time, standing alone, is insufficient to overcome the adverse inferences of the drug abuse. The record is silent about the nature and depth of Applicant's recovery, what led to his relapse in May 1991 or occasioned his cessation of drug abuse in August 1991. Without evidence of changes in lifestyle or attitude underlying his recovery, I am unable to conclude that Applicant's drug abuse will not recur. Accordingly, I find criterion H. against Applicant. ⁽⁶⁾

The Government has established its case under criterion G. Applicant's alcohol dependence is well documented in the medical records. Although there is some evidence to suggest that Applicant's alcohol abuse was part and parcel of his drug abuse, the record does not clearly establish the connection. What is clear is that Applicant consumed alcohol abusively after diagnosis as alcohol dependent--although he never completed the drug/alcohol rehabilitation program--and continues to consume alcohol, albeit at levels not abusive. The record is silent on the nature of Applicant's recovery from his earlier alcohol abuse. On these facts, the mere passage of time without apparent abuse of alcohol is insufficient to overcome the adverse inferences of the well-documented abuse. Accordingly, I find criterion G. against Applicant.

The Government has established its case under Criteria E. The information sought by the Government during the subject interview was relevant and material to the Government's investigation of the Applicant's fitness for access to classified information, and the Applicant knowingly and wilfully falsified that information. The record clearly establishes that

Applicant knew that his profit arrangement with his neighbor constituted sale of cocaine. The falsified statement clearly conveyed that Applicant was paying for his cocaine out of current, legitimate income. I do not accept Applicant's representations that he initially saw this activity only as supporting his drug habit, and not actual sales of cocaine. This falsification suggests that Applicant may be unwilling to disclose adverse information about himself if he perceives it to be contrary to his best interest. I find criterion E. against the Applicant.

The Government has established its case under Criteria J. The Applicant's knowing falsification to an agency of the federal government on matters within that agency's jurisdiction clearly violates 18 U.S.C. §1001. The falsification had the potential to influence the course of the background investigation--in areas of legitimate concern to the Government. The drug sales violated both state and federal law and demonstrate extremely poor judgment and reliability. I find criterion J. against the Applicant.

FORMAL FINDINGS

Paragraph 1. Criterion H: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: For the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

Subparagraph j: Against the Applicant

Subparagraph k: Against the Applicant

Subparagraph l: Against the Applicant

Paragraph 2. Criterion G: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Paragraph 2. Criterion E: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Paragraph 3. Criterion J: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

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.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996 (Directive).
2. Applicant was supposed to report back from the leave of absence on 11 November 1991; he failed to do so. He later agreed to return on 18 November, but did not. Applicant acknowledged (Answer, Item 5) that his 1991 drug use was a major factor in his losing this job.
3. These omissions/misrepresentations were not alleged in the SOR, and I have not considered them on the merits of this case. I have, however, considered them on the issue of Applicant's credibility.
4. He bolstered this claim by asserting that he could afford the cocaine on his take-home pay of \$1,200.00 per week.
5. This characterization is inconsistent with Applicant's admission of alcohol abuse in his answer to the SOR, and is inconsistent with the description of alcohol abuse contained in the medical records (Items 9, 10, 11, 12, 13, 14). I conclude Applicant understated the extent of his alcohol abuse in his sworn statement.
6. However, I find that the record does not support an adverse finding concerning Applicant's use of benzodiazepine. Applicant acknowledges the positive drug screen, but has no recollection of using the drug. The Government's evidence proves only the presence of the drug in Applicant's blood. Treatment records clearly indicate Applicant's drugs of choice as cocaine, marijuana, and alcohol.