

November 13, 1996

In Re:

SSN:

Applicant for Security Clearance

ISCR OSD Case No. 96-0047

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL KIRKPATRICK

Appearances

FOR THE GOVERNMENT

Claude R. Heiny II, Esq.

Department Counsel

FOR THE APPLICANT

Pro Se

STATEMENT OF THE CASE

On January 19, 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 the attached 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 the Applicant, and which recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

The Applicant responded to the SOR in writing on February 13, 1996, and in her Answer she elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on July 26, 1996. The Government submitted nine items in support of its contentions. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on August 21, 1996, and she submitted additional material on September 20, 1996.

This case was assigned to the undersigned for resolution on September 30, 1996.

FINDINGS OF FACT

Applicant admitted the material facts alleged in SOR subparagraphs 1.a. through 1.k., inclusive, 4.b., and 4.c., and those admissions are hereby incorporated herein as findings of fact. Although some of her responses to the other SOR subparagraphs are somewhat ambiguous, they are deemed to be denials. The following additional findings of fact are entered as to each paragraph and criterion in the SOR:

Applicant is 37 years old, and she is employed by a defense contractor as an ----- . She seeks a DoD security clearance in connection with her employment in the defense industry.

Paragraph 1 (Criterion H - Drug Involvement.) The Government alleges that Applicant is ineligible for clearance because she has a history of involvement with illegal drugs.

Applicant used marijuana from six to twelve times per year from 1976 to 1982, smoking the marijuana by pipe, joint, or bong. She purchased marijuana about ten times from 1977 to 1982, paying about \$5.00 per purchase. She smoked marijuana one time in 1984, at a high school reunion. Applicant continued to smoke marijuana two or three times per year from 1984 until October 28, 1995, when she last used marijuana. During recent years, most of the time the marijuana was provided to her by members of her husband's family, but she purchased a "nickel bag" of marijuana about four times from 1991 to 1993 at an intersection in the city, and she recall's another time in 1991 that she purchased a marijuana cigarette from her cleaning lady. (Items 1, 4 and 5.)

Applicant used cocaine four or five times from 1978 to 1979, when she was in college, snorting the cocaine, and "doing a few lines each time." She purchased the cocaine two or three times from a person at her college campus, paying about \$25.00 for each purchase. Applicant used crack cocaine approximately six times in 1988. She used crack cocaine four times from February to May of 1993. On each of those four occasions, she purchased the crack cocaine on a street corner in the city, spending \$10.00 per purchase. One night after Applicant had purchased the crack cocaine, she drove around all night in her car, "smoking the crack," and her husband called the police to report her missing. The police found her, and escorted her home. (Items 1, 4, and 5.)

From August 31, 1988 to September 5, 1988, Applicant received medical treatment at a hospital for a condition diagnosed as "substance abuse." The hospital records reflect that the primary substance identified in that treatment was alcohol, but that Applicant was also treated for "occasional cocaine use after drinking." Applicant states that said one week in-patient hospital treatment program "was successful in getting me off of the crack cocaine." (Items 1, 4 and 7.)

Applicant used hallucinogenic mushrooms one time in 1978. She used Quaaludes one time in 1978. She used amphetamine or methamphetamine (speed) on two occasions in 1977. She used phencyclidine (PCP) ("angel dust") on one occasion in 1977. (Items 1 and 4.)

Applicant sold "pink footballs," which were either "prescription diet pills or speed," for about three months in 1977, earning a profit of seventy-five cents per pill, for a total profit of approximately \$100.00. (Items 1 and 4.)

From June 2, 1993 to December 22, 1994, Applicant received psychological counseling and treatment for matters which included substance abuse. (Items 1, 3, 4, and 6.)

I find that marijuana, cocaine, hallucinogenic mushrooms, Quaaludes, phencyclidine, amphetamine, and methamphetamine are all "drugs" as identified and listed in Enclosure 2 of the Directive and in the Controlled Substances Act of 1970, as amended. I further find that Applicant's use of these substances constitutes "drug abuse" as defined in Enclosure 2 of the Directive.

Paragraph 2 (Criterion E - Personal Conduct.) The Government alleges that Applicant is ineligible for clearance because she intentionally falsified material aspects of her personal background during a security clearance screening process.

On January 13, 1995, as part of a security clearance application process, Applicant signed and submitted a National Agency Questionnaire (NAQ), certifying that her answers were true, complete, and accurate, and acknowledging that any knowing and willful false answers were punishable by fine or imprisonment pursuant to Title 18, U.S. Code, Section 1001. Question 20.a. of the NAQ inquired whether Applicant had "ever tried or used or possessed any narcotic (to include heroin or cocaine), depressant (to include Quaaludes), stimulant, hallucinogen (to include LSD or PCP), or cannabis (to include marijuana or hashish), or any mind-altering substance (to include glue or paint), even one time or on an experimental basis, except as prescribed by a licensed physician." Applicant answered the question "yes", and stated that she received counseling for narcotic abuse in May of 1993. (Item 3.) Since Applicant did not provide information pertaining to her possession and use of marijuana, cocaine, crack cocaine, hallucinogenic mushrooms, Quaaludes, amphetamine, methamphetamine, or PCP, and considering that Applicant was continuing to smoke marijuana even as of the time that she signed the NAQ, I find that her answer was not true and complete and accurate. (Items 1, 3, 4, and 5.)

Question 20.b. of the NAQ inquired whether Applicant had ever been involved in the illegal purchase or sale of any narcotic, depressant, stimulant, hallucinogen, or cannabis. Applicant answered that question "no." (Item 3.) Since Applicant had purchased marijuana approximately fifteen times, purchased cocaine approximately five times, and purchased crack cocaine approximately four times, I find that her answer was not true and complete and accurate. (Items 1, 3, 4, and 5.)

On August 8, 1995, Applicant signed a written statement, swore an oath that her statement was true, and submitted the statement to the Defense Investigative Service (DIS) as part of the security clearance application process. (Item 4.) In that written document, Applicant stated that she had last used marijuana in 1984, when she graduated from college, and that she had only purchased marijuana approximately ten times, and only during the years 1977 and 1982. (Item 4.) Since Applicant had actually continued to smoke marijuana two or three times per year from 1984 up to the time that she signed and submitted her sworn statement, and since she had purchased marijuana once in 1991 and four times in 1993, I find that her statement was false. (Items 1, 4, and 5.)

In Item 1, Applicant's Response to the SOR, and in the September 20, 1996 letter which Applicant submitted in response to the FORM, she contends that she answered the NAQ questions honestly, and that her statement of August 8, 1995 was honest, to the best of her recollection, but that she later remembered more details of her drug involvement. In other words, her contention is that she did not intentionally provide false information when answering the NAQ questions, or when providing her statement of August 8, 1995, but rather she was merely forgetful.

Applicant also provides, in Item 4, a separate explanation for her false answers to NAQ Questions 20.a and 20.b. She contends on page 3 of Item 4 that she intentionally provided untrue answers because she was concerned that her employer's security office personnel might have access to the NAQ and learn of her drug involvement if she answered Questions 20.a. and 20.b. honestly, and she suspected that she would be interviewed later by DIS, so that she could then tell the truth to DIS personnel.

Applicant's contentions raise a credibility issue. Her comments pertaining to her motives and her state of mind are relevant, and they merit careful consideration. However, they are clearly self-serving, and they need not necessarily be taken at face value. Rather, her contentions must be evaluated in the context of all of the evidence in this case.

In this regard, on December 5, 1995, when Applicant was confronted with the prospect of taking a polygraph examination, she admitted that her previous statement (Item 4) "was not completely 100% truthful regarding the full extent of my past use of illegal drugs." Then Applicant admitted her more recent purchase and use of marijuana. (Item 5; Additional letter submitted in response to the FORM.) Further, driving to a particular street corner in a city for the sole purpose of purchasing crack cocaine and marijuana, and doing so on four separate occasions in 1993, plus purchasing marijuana from her cleaning lady in 1991, are not matters that Applicant was likely to forget. After all, those were relatively recent events, and those were the crisis events which led her to seek counseling for substance abuse in 1993. She was even using marijuana as recently as 1995, the same year that she signed and submitted the two documents. It is unlikely, considering all of the circumstances of this case, that Applicant would remember that she used illegal drugs from 1976 until 1984, and then "forget" that she had also been purchasing and using illegal drugs during the more recent, eleven year period from 1984 to 1995.

In addition, her two explanations for providing untrue answers to the NAQ questions are mutually exclusive, in that they cannot both be true. If she intentionally gave false answers due to concern that her employer's security personnel might see her NAQ, then it cannot also be true that she "forgot." If she provided false information about her purchase and use of illegal drugs because she "forgot," then it cannot also be true that she remembered her purchase and use of illegal drugs but intentionally decided to conceal it from her employer's security personnel.

Considering all of the evidence in this case, both favorable and unfavorable, I find that Applicant's explanations are not credible. The weight of the evidence is that Applicant knowingly and willfully falsified her answers to Questions 20.a. and 20.b. of the NAQ, and that she knowingly and willfully falsified her sworn statement dated August 8, 1995, and that is what I find. (Items 1, 3, 4, and 5; Applicant's letter dated September 20, 1995, submitted in response to the FORM.)

Paragraph 3 (Criterion J - Criminal Conduct.) The Government alleges in SOR subparagraph 3.a. that Applicant is

ineligible for clearance because she knowingly and willfully violated the provisions of Title 18, United States Code, Section 1001, a Federal criminal statute.

As set forth in detail in the preceding discussion of the Criterion E allegation, I find that Applicant knowingly and intentionally omitted, concealed, and falsified information concerning her purchase and use of illegal drugs when she signed and submitted to her NAQ dated January 13, 1995, and when she signed, swore to the truth of, and submitted her statement dated August 8, 1995. Clearly, this information about her relatively recent purchase and use of illegal drugs had the potential to influence her security clearance investigation or decision. Therefore, I find that such misrepresentations were material within the meaning of the statute, and that Applicant's knowing and willful misrepresentations violate the provisions of Title 18, U.S. Code, Section 1001, which is cited in writing on both of the forms themselves. (Items 3 and 4.) I have taken official notice of the language of the statute. (Item 9.)

Paragraph 4 (Criterion G - Alcohol Consumption.) The Government alleges in SOR subparagraphs 4.a. through 4.d. that Applicant is ineligible for clearance because she has a history of excessive alcohol consumption.

Applicant states that she began to drink alcohol in college in 1978. She consumed beer at parties, on a weekly basis. During 1988, when she was using crack cocaine, Applicant drank to excess, drinking four to six beers per night, for a period of two months. From February to May of 1993, when she was using cocaine, Applicant drank six beers monthly. Now, Applicant drinks a few beers monthly with friends at social gatherings. (Item 4.)

However, there is troubling evidence that Applicant may be understating her alcohol consumption. For example, on August 31, 1988, Applicant was admitted to a hospital for alcohol detoxification, and for treatment for alcohol abuse. Her medical history reveals that she had "been drinking alcohol for many years," and that her chief complaint was "alcohol dependence." She was discharged from the hospital on September 5, 1988. (Item 7.)

Then, from June of 1993 to December of 1994, Applicant received counseling for "alcohol abuse." (Items 4 and 6.) The counseling records reveal that Applicant was trying to maintain sobriety, but that she "falters sometimes." (Item 6.) Applicant attended Alcoholics Anonymous (AA) meetings from the spring of 1988 to the spring of 1990, at first on a daily basis, and then on a weekly basis, and she attended AA meetings from May of 1993 to the end of 1994, but she has only attended six AA meetings since 1994. (Item 4.) Applicant continues to consume alcohol. (Items 1, 4 and 6.)

Mitigation.

Applicant received in-patient treatment for substance abuse from August 31, 1988 to September 5, 1988, and she received counseling for substance abuse from June 2, 1993 to December 22, 1994. (Items 1, 3, 4, 6, and 7.) She attended Narcotics Anonymous meetings on a daily basis from May of 1993 to May of 1994, and on a weekly basis from May of 1994 to December of 1994. (Item 4.) She went to AA meetings "daily and then later weekly from the Spring of 1988 to the Spring of 1990," then "resumed AA in May of 1993 and went weekly until the end of 1994," and attended six AA meetings since the end of 1994. (Item 4.)

Applicant has the respect of her peers, and during the past two years she has received two awards for "great work." (Item 1.) She is a good parent and wife. (Item 1.)

Applicant expresses remorse for smoking marijuana in October of 1995. (Letter dated September 20, 1996, submitted in Response to the FORM.)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines and policies for determining eligibility for access to classified information, and these guidelines must be given consideration in making security clearance determinations. The following adjudicative guidelines and policies are found to be applicable to the facts of this case:

Criterion H (Drug Involvement.)

Conditions that could raise a security concern:

1. Any drug abuse;
2. Illegal drug possession, including ... purchase, sale

Conditions that could mitigate security concerns:

4. Satisfactory completion of a drug treatment program prescribed by a credentialed medical professional.

Criterion E (Personal Conduct)

Conditions that could raise a security concern:

2. The 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, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;
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:

(None of the Directive's Criterion E mitigating conditions apply to the facts of this case.)

Criterion J (Criminal Conduct)

Conditions that could raise a security concern:

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:

2. The crime was an isolated incident.

Criterion G (Alcohol Consumption.)

Conditions that could raise a security concern:

3. Diagnosis by a credentialed medical professional of alcohol abuse or alcohol dependence;
4. Habitual or binge consumption of alcohol to the point of impaired judgment;
5. Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program.

Conditions that could mitigate security concerns:

(None of the Directive's Criterion G mitigating conditions apply to the facts of this case.)

In addition, the general adjudication policies expressed at Paragraph F.3. of the Directive and in Enclosure 2 of the Directive have been considered as to each criterion in this case. Enclosure 2 provides, in pertinent part as follows: "The adjudication process is the careful weighing of a number of variables known as the whole person concept. All available information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating the relevance of an individual's conduct, the adjudicator should consider the following

factors:

"The nature, extent, and seriousness of the conduct.

"The circumstances surrounding the conduct, to include knowledgeable participation.

"The frequency and recency of the conduct.

"The individual's age and maturity at the time of the conduct.

"The voluntariness of participation.

"The presence or absence of rehabilitation and other pertinent behavioral changes.

"The motivation for the conduct.

"The potential for pressure, coercion, exploitation, or duress.

"The likelihood of continuation or recurrence."

In DOHA cases the Government has the initial burden to go forward with persuasive evidence in support of the factual and conclusionary allegations in the SOR. If the Government meets this initial obligation, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficiently persuasive to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant her a security clearance

CONCLUSIONS

The Government's evidence proves under Criterion H that Applicant purchased, used, and sold drugs as alleged in SOR Paragraph 1 and its subparagraphs. The Government's evidence proves under Criterion E that Applicant knowingly and willfully falsified material information pertaining to her purchase and use of illegal drugs both in the NAQ and also in the signed, sworn statement which she provided to the Government in 1995 in connection with her security clearance application process, as alleged in SOR Paragraph 2 and its subparagraphs. The Government's evidence proves under Criterion J that Applicant's knowing and willful misrepresentation of those material facts in the two security clearance application documents violates the provisions of Title 18, United States Code, Section 1001, as alleged in SOR Paragraph 3 and its subparagraph. The Government's evidence proves under Criterion G that Applicant has consumed alcohol to excess as alleged in SOR Paragraph 4 and its subparagraphs.

Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against her.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in instances of illegal drug involvement, instances of the dishonest and criminal conduct of deliberately falsifying security clearance application documents, and instances of excessive alcohol consumption, all of which demonstrate poor judgment and unreliability. The Government must be able to repose a high degree of trust and confidence in persons granted access to classified information. Security requirements therefore include consideration of a person's honesty, judgment, sobriety, and sense of obligations.

Applicant's purchase and use of illegal drugs over a long period of time demonstrates poor judgment, and it raises questions about her willingness to comply with laws and to protect classified information. Drug abuse may impair Applicant's social or occupational functioning, thereby increasing the risk of an unauthorized disclosure of classified information, as, for example, when she is "high" on drugs. Although Applicant completed a one week, in-patient detoxification and substance abuse treatment program in 1988, she resumed the purchase and use of illegal drugs.

Although Applicant received psychotherapy counseling during 1993 and 1994 for matters which included substance abuse, she continued to smoke marijuana until as recently as October of 1995, so she has only about one year of abstinence.

Since the Government relies so heavily upon the integrity and honesty of security clearance holders, and it is a negative factor for security clearance purposes where Applicant has deliberately provided false information about material aspects of her personal background. The falsification of the NAQ, and the falsification of the signed, sworn statement, were relatively recent events, and there is no evidence that Applicant made any prompt, good-faith efforts to correct the misrepresentations prior to being confronted with the polygraph equipment on December 5, 1995. There is no evidence that Applicant's false answers were caused by improper advice of authorized personnel. Clearly, there is a direct correlation and nexus between Applicant's security clearance worthiness and her reliability in other serious matters, to include obeying the law.

Alcohol abuse, even if it occurs during off-duty hours, poses a risk that a person under the influence of alcohol could mishandle or fail to properly safeguard classified information. In this case, hospital and medical records reveal diagnoses which include "alcohol abuse." Although Applicant participated in alcohol-related treatment in 1988, 1993, and 1994, she no longer receives treatment, no longer participates in AA or other aftercare, and in fact continues to consume alcohol. There is no evidence of changes in her lifestyle or behavior supportive of sobriety.

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing her request for a DoD security clearance. Therefore, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1, 2, 3, and 4 of the Government's Statement of Reasons.

For the reasons stated, I conclude that Applicant is not suitable for access to classified information.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1. Criterion H: Against the Applicant.

Subparagraph 1.a.: Against the Applicant.

Subparagraph 1.b.: Against the Applicant.

Subparagraph 1.c.: Against the Applicant.

Subparagraph 1.d.: Against the Applicant.

Subparagraph 1.e.: Against the Applicant.

Subparagraph 1.f.: Against the Applicant.

Subparagraph 1.g.: Against the Applicant.

Subparagraph 1.h.: Against the Applicant.

Subparagraph 1.i.: Against the Applicant.

Subparagraph 1.j.: Against the Applicant.

Subparagraph 1.k.: Against the Applicant.

Subparagraph 1.l.: Against the Applicant.

Paragraph 2. Criterion E: Against the Applicant.

Subparagraph 2.a.: Against the Applicant.

Subparagraph 2.b.: Against the Applicant.

Subparagraph 2.c.: Against the Applicant.

Paragraph 3. Criterion J: Against the Applicant.

Subparagraph 3.a.: Against the Applicant.

Paragraph 4. Criterion G: Against the Applicant.

Subparagraph 4.a.: Against the Applicant.

Subparagraph 4.b.: Against the Applicant.

Subparagraph 4.c.: Against the Applicant.

Subparagraph 4.d.: 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 the Applicant.

Michael Kirkpatrick

Administrative Judge