

Date: November 5, 1996

In re:

SSN: -----

Applicant for Security Clearance

ISCR OSD Case No. 96-0245

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR THE GOVERNMENT

Earl C. Hill, Esq.

Department Counsel

FOR THE APPLICANT

Pro Se

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on May 17, 1996. (Copy attached.) The SOR detailed reasons why the Government could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.⁽¹⁾ The SOR consists of allegations based on Criterion H (improper or illegal involvement with drugs) paragraph 1, Criterion E (questionable judgment) paragraph 2, Criterion J (pattern of criminal activity) paragraph 3, and Criterion F (financial considerations). Applicant responded to the allegations set forth in the SOR in a written Answer, dated June 24 1996, and chose not to have a hearing. On August 8, 1996, the Department Counsel prepared a File of Relevant Material (FORM) which was forwarded to Applicant on August 15, 1996; he was given 30 days after receipt of the FORM to object to any exhibits or to submit information on his own behalf.

After receiving the FORM on August 22, 1996, he submitted his letter of response on September 26, 1996 which DOHA received on September 30, 1996. Department Counsel did not object to his letter which I have marked and admitted into evidence as Exhibit A. This matter was assigned to me on October 1, 1996, but I did not receive it until October 7, 1996. It is my role as administrative judge to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

FINDINGS OF FACT

The Applicant admitted in his Answer (Item 3) the factual allegations contained in subparagraphs 3.a., 3.b, 3.c., 3.d, 3.e, 3.f, 3.g, 3.h, and 3.i. of the SOR; he admitted with explanation subparagraphs 1.a, 1.b, 1.c., 1.d., 1.e, 1.f., 1.g., 1.h, 1.u, 1.v, 2 ; and he admitted in part 1.i, 1.k, 1.m, 1.o, 1.p, 1.q, 1.r, 1.s, 1.t, 1.w, 2.a, 2.b, 2.c, 2.d, his 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 the same, I make the following additional Findings of Fact:

The Applicant, a 50-year old employee of a defense contractor (Company #1), sought a confidential security clearance after he began work there in March 1994. Item 4. He is now employed by Company #2 according to a August 22, 1996, letter from that company.

Applicant completed a National Agency Questionnaire (NAQ) on May 3, 1995, where he knowingly and willfully falsified his answers. While he answered "Yes" to questions 18.a., concerning his past arrests, he listed only three of eight arrests, and knowingly and willfully falsified his answers to question 20.a. by answering "Yes" but understating substantially his drug use, and by answering "No" to question 20.b. concerning his past purchases of drugs. He did not disclose the information as he feared he would not get his clearance. (Item 3 and Applicant's Exhibit A).

Subsequently, Applicant was interviewed by Defense Investigative Service (DIS) Agent #1 and on October 2, 1995, admitted some of his arrests; but he admitted only to minimal and dated marijuana use. He concealed his extensive past history of drug abuse.

On December 1, 1995, Applicant was interviewed again by Agent #1 and revealed more arrests for worthless checks on five occasions in the 1989/90 period which he claimed were not significant enough to list on his NAQ and one arrest for retail theft in January 1990 which he claimed to have forgotten. He elaborated on his financial status with creditor #1 and planned to address that \$3,063.69 debt plus \$1,500 interest, but did not voluntarily reveal any additional drug use. Item 6. On December 4, 1995, he provided a statement to Agent #1 where he confirmed his use of other drugs beyond his marijuana use. But while stating he "decided to tell the truth at this point after being confronted with information that I had in fact used more drugs than I previously admitted to," he then admitted only part of his past drug use and purchases. He did admit to living with his brother's former wife who was involved in a 1990 forgery arrest in 1990 and other questionable conduct, and who used drugs to include cocaine. He admitted he himself actually used cocaine from summer 1989 until January 1990 with his brother and his wife; and he purchased it and spent about \$50-\$150 per week from five different dealers. Out of curiosity he also used LSD from 1972-73 with his former wife, his brother, and his brother's wife. He also misused cough syrup laced with codeine from 1981 to 1991 for pleasure; he was once even questioned by a local police officer who was alerted to his frequent purchases of cough syrup, but no action was taken with regard to this issue by the police. Item #7.

As he was afraid he would not be granted a clearance, Applicant did not admit further additional drug use until he spoke to DIS Agent #2 two months later on February 14, 1996. Item # 10 . Applicant signed a DIS Rights Warning Procedure/Waiver Certificate (Item 8) which advised that anything he said or did could "be used as evidence against me in a criminal trial and/or any administrative proceeding." He also signed a Polygraph Examination Statement of Consent. Item # 9. Applicant then admitted his use of marijuana began in 1967 and he continued to use it weekly until 1973, monthly from 1974 to 1989 during his second marriage, and intermittently from 1989 until June 1995. He has not smoked marijuana since June 1995. He has no future intentions of using marijuana again, but merely says he "would guess that if [it] was offered," he would "most likely not accept it." Item #10. He purchased marijuana for personal use and may have sold some "extra marijuana" to friends; he also tried to grow marijuana in 1974-75. Item #10.

Applicant also used magic mushrooms in 1974 and also used speed on several occasions as recently as early 1995, but did not purchase speed in 1995. After his December 5, 1995, DIS interview, he also recalled he used Butyl Nitrate, an inhalant from 1988 to 1989. He also obtained and used Percocet without a prescription to deal with a bad problem with his foot in February 1996. He has purchased other pills illegally three or four times between December 1995 and February 1996 which he shared with his roommate. He could not say that he would not continue to purchase and use these pills in the future. Item #10. He used more Percocet than prescribed to deal with uncontrolled pain. Exhibit A.

On November 25, 1989, and on November 19, 1989, Applicant was found guilty of issuing worthless checks and fined. Item #15. On January 9, 1990, Applicant was arrested and later convicted of operating a motor vehicle while intoxicated, first offense, with a .15 BAC. He was to enroll in traffic safety school and to pay a \$75 assessment fee. He completed the course on December 5, 1990. Item #11. He paid a fine of \$553. Item #13.

On January 16, 1990, Applicant was issued a citation for retail theft for shoplifting two packs of cigarettes. Item #12.

Applicant was found guilty of a misdemeanor, Issuance of a Worthless Check, on December 31, 1989, and was convicted on October 26, 1990. Item #14. Applicant was arrested for operating a motor vehicle while under the influence of intoxicants, second offense, on June 19, 1992, with a .133 and .12 BAC. Item #15. He was found guilty of Reckless Driving and paid a fine of \$153. Item #15

Applicant's financial problems began in 1988 when he lost a job. Item #5 at 3. He was indebted to Creditor #1 for \$3,063.69 plus interest for a credit card debt charged off in 1990. Item #16. However, he has made a payback agreement with Creditor #1 and pays a minimum of \$50 per month and now owes \$2,700. Answer. His debts to Creditors #2 and #3 were referred to a collection agency where he made a payback agreement of \$25 per month. Answer. He has now reduced his debt to Creditor #1 to \$2,550 and to the collection agency to \$75. Exhibit A.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

Criterion H: Drug Involvement

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.

Drugs are defined as mood and behavior altering:

- (a) drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens) and
- (b) inhalants and other similar substances.

Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

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

- (1) any drug abuse (see above definition);
- (2) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution;

Conditions that could mitigate security concerns include:

None

Criterion E: Personal Conduct

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 also include:

- (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, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination;

Conditions that could mitigate security concerns include:

None

Criterion J - Criminal Conduct

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:

None

Criterion F - Financial Considerations

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

- (1) a history of not meeting financial obligations;
- (2) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust.

Conditions that could mitigate security concerns include:

- (1) the behavior was not recent;
- (3) the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation);
- (6) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance.

Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Criterion H: Drug Involvement

Having considered the evidence of record in light of the appropriate legal precepts and facts, I conclude that the

Government established its case with regard to Drug Involvement (Criterion H). Applicant continued his use and purchases of marijuana from 1967 until June 1995. Further, he used and purchased other drugs at an earlier stage in his life: LSD from 1972-73; cocaine from 1989 to 1990; and speed several times, including in 1995; and mushrooms in 1975. He also misused a variety of prescription drugs from 1995 to February 1996, and he could not say he would not continue to use and purchase these prescription drugs in the future. He also misused cough syrup laced with codeine from 1981 to 1991. Clearly, he falls within the drug abuse conditions that could raise a security concern and may be disqualifying which include: (1) any drug abuse; and (2) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution. Only his dated drug use of mushrooms, LSD and cocaine can be mitigated under conditions that could mitigate security concerns which include: (1) the drug involvement was not recent.

While Applicant now promises that he will not use drugs again, he merely says he "would guess that if [it] was offered," he would "most likely not accept it." Consequently, with his long and extensive history of drug abuse, it is too soon to find that he falls within mitigating condition (3) a demonstrated intent not to abuse any drugs in the future, as not enough time has passed for Applicant to have demonstrated his intent to remain drug-free: his marijuana use continued to June, 1995, and his prescription drug abuse continued until February 1996 and may continue in the future. Consequently, his newly fashioned promise that he does not intend to use illegal drugs again may be genuine, but has to be tested by time. I have also considered the Adjudicative Process factors and, while I find for the Applicant under subparagraphs 1.l., 1.n., 1.s., 1.t., 1.u., 1.v., and 1.w., I find against the Applicant under Paragraph 1 and subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.i., 1.j., 1.k., 1.m., 1.o., 1.p., 1.q., and 1. r.

Criterion E: Personal Conduct

Notably, Applicant's drug use did not come to light because he revealed it on his National Agency Questionnaire (NAQ) as he willfully falsified answers to questions 20.a. and 20.b. on drug use and purchases as well as understated his past arrests in answer to question 18.a. While Applicant then admitted some drug use and past arrests to Agent #1, he still minimized his past drug use and purchases. It was not until his interview with DIS Agent #2 on February 14, 1996, that he disclosed his drug usage in full. Thus, having considered the evidence of record in light of the appropriate legal precepts and facts, I conclude that the Government established its case with regard to personal conduct, Criterion E, as Applicant's conduct involved questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations which could indicate that he may not properly safeguard classified information.

By withholding relevant and material information about his past arrests and drug use on his NAQ and in his initial interviews with DIS Agent #1, his conduct falls within conditions that could raise a security concern and may be disqualifying. In his case they include 2 and 3. First, under security concern (2) he deliberately omitted, concealed, or falsified relevant and material facts from his personnel security questionnaire when he had an obligation to be truthful. He continued his questionable personal conduct under security concern (3) when he deliberately provided misleading information concerning relevant and material matters to DIS investigator #1. There is no question that he did not tell the entire truth to Agent #1.

While in his favor, he did finally reveal the entirety of his past drug use to DIS Agent #2, that favorable conduct came too late in the security process to supply a basis for mitigation. Thus, after also considering the Adjudicative Process factors, I find against the Applicant under Paragraph 2 and subparagraphs 2.a., 2.b.(1) and (2), 2.c.(1) and (2), 2.d., and 2. e.

Criterion J - Criminal Conduct

Having considered the evidence of record in light of the appropriate legal precepts and facts, I conclude that the Government established its case with regard to criminal conduct, Criterion J, as Applicant's conduct involved a history or pattern of criminal activity which creates doubt about his judgment, reliability and trustworthiness. When he falsified his answers to the NAQ by minimizing his past arrests, past drug use and purchases, he made a knowing and willful falsification which is a violation of United States Code Title 18, Section 1001. Thus, by this criminal act as well as by his other multiple lesser offenses, he falls within conditions that could raise a security concern and may be disqualifying. In his case they include 1 and 2.

While his arrests were all misdemeanors and somewhat dated, with the last arrest in 1992, he does not meet the strict

mitigation standards. Specifically, with his drug abuse and purchases, there is insufficient evidence that his conduct comes with mitigation consideration (5), as there is not yet clear evidence of successful rehabilitation. Consequently, after also considering the Adjudicative Process factors, I find against the Applicant under Paragraph 3 and subparagraphs 3.a. through 3.i.

Criterion F - Financial Considerations

Having considered the evidence of record in light of the appropriate legal precepts and facts, I conclude that the Government established its case with regard to financial considerations, Criterion F, as Applicant's conduct involved a history or pattern of financial issues which creates doubt about his judgment, reliability and trustworthiness. During the period he was unemployed his behavior reflected conditions that could raise a security concern and may be disqualifying: (1) a history of not meeting financial obligations. I have even more concern over disqualifying concern (2) as with his uttering a forged check in 1990, he was also involved in deceptive or illegal financial practices which showed an intentional financial breach of trust.

On the other hand, he seems now to have turned his life around financially and is consistently making payments to Creditor #1 where he made a payback agreement and has now reduced his debt to Creditor #1 to \$2,550. Also, he has consolidated his payments to Creditor #2 and #3 with a collection agency where he made a payback agreement of \$25 per month and now only owes \$75. Thus, I conclude his efforts to resolve these financial concerns constitute mitigation under considerations (1) (as the behavior is not recent), (3) (as the conditions that resulted in the behavior were largely beyond the person's control, *e.g.*, loss of employment), and (6) (as he has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts). Consequently, after also considering the Adjudicative Process factors, I find for the Applicant under Paragraph 4 and subparagraphs 4.a. through 4.e.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Criterion H: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: For Applicant

Subparagraph 1.m.: Against Applicant

Subparagraph 1.n.: For Applicant

Subparagraph 1.o.: Against Applicant

Subparagraph 1.p.: Against Applicant

Subparagraph 1.q.: Against Applicant

Subparagraph 1.r.: Against Applicant

Subparagraph 1.s.: For Applicant

Subparagraph 1.t.: For Applicant

Subparagraph 1.u.: For Applicant

Subparagraph 1.v.: For Applicant

Subparagraph 1.w.: For Applicant

Paragraph 2. Criterion E: AGAINST APPLICANT

Subparagraph 2.a. Against Applicant

Subparagraph 2.b. Against Applicant

Subparagraph 2.b.(1) Against Applicant

Subparagraph 2.b.(2) Against Applicant

Subparagraph 2.c. Against Applicant

Subparagraph 2.c.(1) Against Applicant

Subparagraph 2.c.(2) Against Applicant

Subparagraph 2.d. Against Applicant

Subparagraph 2.e. Against Applicant

Paragraph 3. Criterion J: AGAINST APPLICANT

Subparagraph 3.a. Against Applicant

Subparagraph 3.b. Against Applicant

Subparagraph 3.c. Against Applicant

Subparagraph 3.d. Against Applicant

Subparagraph 3.e. Against Applicant

Subparagraph 3.f. Against Applicant

Subparagraph 3.g. Against Applicant

Subparagraph 3.h. Against Applicant

Subparagraph 3.i. Against Applicant

Paragraph 4. Criterion F: FOR APPLICANT

Subparagraph 4.a.: For Applicant

Subparagraph 4.b.: For Applicant

Subparagraph 4.c.: For Applicant

Subparagraph 4.d.: For Applicant

Subparagraph 4.e. For 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.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), and as amended by Change 3 dated February 16, 1996.