

DATE: March 21, 1997

In Re:

SSN: -----

Applicant for security clearance

DOHA Case No. 96-0265

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

Appearances

FOR THE GOVERNMENT

Earl C. Hill, Esq.

Department Counsel

FOR THE APPLICANT

Robert S. Gardner, Esq.

STATEMENT OF CASE

On April 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 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 June 11, 1996.

The case was received by the undersigned on August 1, 1996. A notice of hearing was issued on December 16, 1996, and the case was heard on January 6, 1997. The Government and Applicant submitted documentary evidence. Testimony was taken from Applicant and four witnesses. The transcript was received on January 17, 1997.

RULINGS ON PROCEDURE

At the hearing, subparagraph 1k was amended by changing the last letter ("z") of the misspelled word "zanez" to "x." Also, subparagraph 1p was amended by deleting the word "morphine" from the allegation. Finally, subparagraph 1o shall be amended by changing the admission date to June 27, 1994, and the discharge date to July 25, 1994, to conform the SOR to the evidence presented.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The

SOR alleges illegal drug involvement. Applicant essentially admitted all the material allegations. Applicant's admissions shall be incorporated in the following Finding of Facts.

Applicant is 26 years old and employed as an ----- with a defense contractor. He seeks a secret level clearance.

Applicant used marijuana from once a week in September 1990 to daily and sometimes more than daily use from September 1991 to June 1994.⁽²⁾ According to GE #2, most of the marijuana was provided by friends or was purchased. He purchased the drug on a weekly basis and sold the drug between ten and fifteen times to friends. The most money he made on any one sale (from a purchase of about \$700 worth of marijuana) was approximately \$150. (GE #2). Applicant's first wife induced Applicant to use marijuana in large quantities (Tr. 24) because she was an excessive marijuana user for several years before she met him. (Tr. 25). Applicant encountered significant financial problems and had trouble maintaining respectable grades. (Tr. 26).⁽³⁾

Applicant separated from his wife in approximately March 1993, three months after the marriage, when he realized the union would not work because of irreconcilable differences. (Tr. 26). He did not stop using marijuana immediately because he still did not understand he had a problem. (Tr. 27). After counseling with his father, a drug counselor, Applicant was able to firmly commit to rehabilitation (Tr. 27), and began outpatient treatment on June 27, 1994.

According to GE #2, Applicant used hashish on one occasion before 1993 and one occasion after 1993. He used LSD on two occasions in 1991 and 1992. Applicant used mushrooms and opium on one occasion in the fall of 1991 or 1992. He used Zanex in the last summer of 1992. He purchased hashish, LSD, mushrooms, and Zanex.

Applicant's outpatient treatment for approximately a month from June to July 1994 was for cannabis dependence. Applicant's presenting problem at admission was his inability to stop using marijuana and his emerging understanding he could not achieve his employment aspirations if he continued drug use. (GE #5). Applicant's found the treatment to be educational (Tr. 28), and the medical personnel found Applicant's positive attitude helped him realize his addiction. He was given a good prognosis on condition he follow-up with the aftercare recommendations. (GE #5). Applicant went to Alcoholics Anonymous (AA) meetings for about three months and one or two Narcotics Anonymous (NA) meetings. (Tr. 29). He discontinued his AA and NA because he was not receiving any positive lessons to assist his recovery. (Tr. 30). He also believed a move to another location would benefit his recovery the most. (GE #3; Tr. 53).

On April 26, 1995, Applicant tested positive for codeine in a preemployment evaluation for his present employer. According to GE #3, Applicant was very sick in April 1995 with bronchitis. He had no doctor or medical insurance, his credit cards were at their limits. He obtained a medical card from his friend and, posing as his friend, received medical attention. He paid his friend for all services rendered. Applicant realized he should not have used the medical card but he was very sick. (Tr. 37).

Applicant's former supervisor A interviewed Applicant for employment in April 1995 and supervised him for a year. (Tr. 61). A realized there was a problem with Applicant's security clearance application because of the inordinate delay without action. (Tr. 64). Applicant was very reliable and performed excellently while under A's supervision. A is familiar with the extent of Applicant's past drug use but never detected any sign of drug use. (Tr. 66).

B, Applicant's coworker for a year, has seen Applicant's reliable work. (Tr. 70).

C has been Applicant's unofficial supervisor since September 1996. (Tr. 74). Applicant is a good worker. (Tr. 78).

D, Applicant's coworker who also lived with Applicant from January to October 1996, is confident Applicant has put his drug use behind him (Tr. 91) because D never saw any signs at work or in social settings or at the apartment they shared. (Tr. 90).

E, the ----- manager, has received reports of Applicant's strong work ethic. (Applicant's Exhibit C).

Applicant's credit report in June 1995 reflected a high credit amount of \$20,500 with one debt over 30 days past due.

Having weighed and balanced the evidence, specifically GE #4 with Applicant's demeanor during the course of his

testimony, I find Applicant's testimony generally credible. The most important change Applicant made in his lifestyle was his move to another part of country to continue his recovery while realizing his aspirations.

POLICIES

Enclosure 2 of the Directive sets 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 (Illegal Drug Involvement)

Factors Against Clearance:

1. any drug abuse.
2. illegal drug possession...purchase, sale, or distribution.

Factors for Clearance:

1. the drug involvement was not recent.
3. a demonstrated intent not to use drugs in the future.
4. satisfactory completion of a drug treatment program prescribed by a credentialed medical professional.

General Policy Factors (Whole Person Concept)

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at page 2-1 of Enclosure 2 of the Directive) include: (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 voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; and, (8) 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 (illegal 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. As a general rule, the longer the period of drug abuse, the longer the period of recovery should be in order to have complete confidence an applicant will not revert to drug use in the future.

CONCLUSIONS

The Government has established a case of illegal drug involvement under Criterion H. Applicant's use of other drugs identified in the SOR is mitigated by the isolated or experimental nature of the use. Applicant's use of marijuana (disqualifying factor #1) poses difficult concerns that are not easily dismissed because, in addition to his regular to addictive⁽⁴⁾ use for more than three and one-half years from September 1990 to June 1994, Applicant purchased the drug (disqualifying factor #2) on a regular basis and he sold the drug (disqualifying factor #2) between ten and fifteen times, making up to \$150 in profit. Finally, there is information Applicant declined inpatient treatment in April 1993.

Although Applicant engaged in more than two and one-half years of drug use at addictive levels, there is no evidence of any kind of drug use after June 18, 1994, approximately two and one-half years ago. Applicant's positive credibility and his actions since June 1994, demonstrates he intends to stick to his firmly held conviction to maintain a drug-free life in the future. First, Applicant participated in a outpatient drug treatment program from June to July 1994 because he recognized he had to put his drug use behind him. His prognosis on discharge was considered good on condition he complete his aftercare. While he participated in part but not all of his aftercare, he realized the only way he could maintain a drug-free life would be to move to another part of the country far enough away from his former negative habits and drug using friends.

Applicant's misuse of the medical card in April 1995 clearly raises concerns about Applicant's judgment but must be weighed and balanced against medical condition (causing the positive preemployment test result for codeine use) and the restoration of Applicant's credit as of June 1995. The good performance reviews from Applicant's former and present supervisor, along with D's belief Applicant will not use drugs in the future, establishes two very substantial reasons why Applicant warrants a security clearance.

FORMAL FINDINGS

Formal Findings required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1 (drug involvement): FOR THE APPLICANT.

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.
- f. For the Applicant.
- g. For the Applicant.
- h. For the Applicant.
- i. For the Applicant.
- h. For the Applicant.
- i. For the Applicant.

j. For the Applicant.

k. For the Applicant.

l. For the Applicant.

m. For the Applicant.

n. For the Applicant.

o. For the Applicant.

p. For the Applicant.

Factual support 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 clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Paul J. Mason

Administrative Judge

1. Applicant denied subparagraph 1c but then essentially the allegation when he opined his limited drug sales did not qualify him as a dealer. However, subparagraph 1m shall be found against Applicant except the treatment was declined in April 1993 and not 1990. (Tr. 39).
2. He never used drugs before meeting his former wife. (GE #4). There were brief periods when Applicant used no drugs. (GE #1).
3. Applicant was making late payments to his creditors, some of his accounts were referred for collection, and he may have bounced a few checks. (GE #2). He was even using money from his parents and obtaining cash advances from his credit cards to purchase drugs. (Tr. 25).
4. Addictive is defined as use at repeated levels to the point of physical or psychological dependency.