

Date: November 27, 1996

In Re:

SSN: -----

Applicant for Security Clearance

DOHA Case No. 96-0379

DECISION OF ADMINISTRATIVE JUDGE

ROBERT R. GALES

APPEARANCES

FOR THE GOVERNMENT FOR THE APPLICANT

William S. Fields, Esquire

Department Counsel

Pro se

STATEMENT OF CASE

On May 28, 1996, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, "*Safeguarding Classified Information Within Industry*," dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, "*Defense Industrial Personnel Security Clearance Review Program*" (Directive), dated January 2, 1992, as amended and modified, 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 a clearance should be granted, continued, denied, or revoked.

A copy of the SOR is attached to this Decision and included herein by reference.

In an unsworn, written statement, dated September 9, 1996, Applicant responded to the allegations set forth in the SOR, and elected to have her case decided on a written record, in lieu of a hearing.⁽¹⁾ Department Counsel submitted the Government's written case on September 13, 1996. A complete copy of the file of relevant material (FORM)⁽²⁾ was provided to Applicant, which she received on September 23, 1996, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She declined to submit any response within the prescribed 30-day period after receipt of the FORM. The case was initially assigned to Administrative Judge Paul J. Mason⁽³⁾ on October 29, 1996, but due to caseload considerations, was subsequently reassigned to, and received by, this Administrative Judge on November 25, 1996.

FINDINGS OF FACT

Applicant has admitted all of the factual allegations pertaining to drug involvement under Criterion H (subparagraphs

1.a. through 1.j.). Those admissions are hereby incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 50 year old female employed by a defense contractor, and she is seeking to retain a SECRET clearance which was initially granted to her in approximately October 1981.

Applicant has been a poly-substance abuser whose choice of illegal substances has been primarily marijuana and hashish,⁽⁴⁾ but who has also experimented with cocaine. In addition, she has abused the prescription depressant Doriden and the prescription depressant Librium. She commenced using marijuana in 1972, when she was about 26 years of age, to increase her energy, facilitate relaxation, and enhance feelings of well-being. She continued to use marijuana, with varying frequency, up to and including, several times in one day, on a daily basis, until at least September 1995. Moreover, during the period 1978-82, she used marijuana while at work and while on active military service.

Applicant was arrested on October 10, 1980, and charged with wrongful possession of marijuana. She was subsequently disciplined under Article 15, Uniform Code of Military Justice.⁽⁵⁾

Applicant intends to continue using marijuana in the future, so long as it is "safe and available,"⁽⁶⁾ but will probably "drastically cutback" such use for the foreseeable future.⁽⁷⁾ Applicant's documented positions regarding the use of marijuana are significant, for as she once informed a counselor, she does not see anything wrong with smoking marijuana, except that its illegal to do so.⁽⁸⁾

I intend to increase my activism in support of legalization (minimal to date) especially if I quit. (If I quit, I will have more money with which to support legalization efforts.)⁽⁹⁾

If in other respects one's life is law abiding, the risk is relatively small at my level of use and has been worth the return in improved quality of life. I truly believe the illegality is based on politics and not based on any harmful or possibly harmful effects of use. Occasionally, I use marijuana to mitigate the symptoms of ulcerative colitis. At such times it is valuable to me for its medicinal effect and the side effects of marijuana are negligible compared with the side effects of prescription drugs that have been prescribed for the problem.⁽¹⁰⁾

On one occasion, in April or May 1965, while a freshman in college, in a suicidal gesture related to poor grades, Applicant consumed and overdosed on a variety of unspecified medications which had been prescribed for her roommate. As a result, she was removed from the university.

On April 20, 1978, in a suicide attempt related to relationship issues, Applicant consumed and overdosed on 40 tablets of the prescription depressant Librium. As a result, she was admitted for treatment, for a condition diagnosed as severe chronic depression, in a local general hospital on April 20, 1978, where she remained until April 25, 1978, when she refused further inpatient treatment. On April 26, 1978, she was enrolled in outpatient treatment at the psychiatric institute of the general hospital, where, until June 21, 1978, she underwent group therapy three times per week, for a condition diagnosed as depressive reaction.

Because of a threatened suicide, she was admitted again on July 17, 1978, and, until August 20, 1978, was treated for a condition diagnosed as severe depressive reaction.

On October 11, 1978, in another suicide attempt, Applicant consumed and overdosed on a handful of the prescription depressant Doriden. As a result, she was again admitted to the psychiatric institute of the general hospital, where until October 20, 1978, she was treated for a condition diagnosed as severe depressive reaction with suicidal ideation. She was subsequently involuntarily maintained in the unit until December 29, 1978, where she was treated for a condition diagnosed as schizophrenia, latent type.

Applicant has vowed not to abuse prescription drugs in the future, and there is no evidence to rebut her contentions

regarding her abuse or future intent.

On several occasions, in 1978 and during 1986-87, she used cocaine. She attributed her actions to curiosity and social pressure.⁽¹¹⁾ She has not used the substance since 1986-87, and has vowed not to use it again in the future. There is no evidence to rebut her contentions regarding use or future intent.

During her period of substance abuse, Applicant periodically purchased varying quantities of marijuana, depending on her budget and the availability of the substance.

Other than the emergency and psychiatric treatment and counseling which she received as the result of her suicide attempts and gesture, and the two counseling sessions following her 1980 arrest, Applicant has never undergone any drug treatment or rehabilitation as a result of her substance abuse.

Applicant has been employed by her present employer, at two different locations, from February 1994 until December 1994, and again from May 1995 until the present. She had served on active military service from July 1980 until February 1982.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Factors) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Factors).

An Administrative Judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision -- an expansion of the factors set forth in Section F.3. of the Directive, are intended to assist the Administrative Judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an Administrative Judge should consider are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of 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.

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;
- (3) failure to successfully complete a drug treatment program prescribed by a credentialed medical professional.⁽¹²⁾ Current drug involvement, especially following the granting of a security clearance, or an expressed intent not to discontinue use, will normally result in an unfavorable determination.

Conditions that could mitigate security concerns include:

None apply.

Since the protection of the national security is the paramount determinant, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security,"⁽¹³⁾ or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded that both standards are one and the same. In reaching this Decision, I have endeavored to draw only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have attempted to avoid drawing inferences that are grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the Government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the Government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the Government's case, and to ultimately demonstrate that it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

One additional comment is worthy of note. Applicant's loyalty and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than loyalty and patriotism. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied decision as to Applicant's loyalty or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of the witness credibility, and after application of all appropriate legal precepts and factors, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

With respect to Criterion H, the Government has established its case. Applicant's improper and illegal drug abuse, including the possession and use of marijuana and cocaine, and the purchase of marijuana, especially that marijuana abuse which occurred while she was a member of the military service, and later, an employee of defense industry in possession of a security clearance, is of particular concern, especially in light of her desire to have continued access to the nation's secrets.

Applicant's actions after 1972 were not those of an immature adolescent, but rather of an adult in her 20s, 30s, and 40s. It is to her credit that after experimenting with cocaine, she ceased doing so, and, except for the events of 1986-87, has not resumed such abuse thereafter.

However, her marijuana abuse is another issue. She did not simply experiment out of curiosity, and stop. Instead, motivated by physical and psychological pleasures, notwithstanding the illegal status of her endeavor, she exhibited a pattern of questionable judgment, irresponsibility, and immature behavior, and continued her substance abuse for nearly one quarter of a century. Furthermore, such abuse continued for nearly fifteen years after she had received a security clearance. In so doing, she placed her drug-induced social pleasures above her fiduciary responsibilities towards the Government and the drug laws. As stated above, improper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. Applicant's actions and responses to inquiry regarding future intentions have answered those questions.

It is unclear if Applicant is actively in a period of abstinence, or if she is still abusing marijuana, for the record is silent as to its availability to her. One thing is clear, however, and that is her declared intention to continue abusing marijuana, albeit at a possibly reduced frequency. In this instance, two factors should change. I believe that both a commitment to abstinence, as well as the successful completion of a drug treatment and rehabilitation program, should be required to demonstrate the successful transformation from substance abuser to a dedicated, abstinent, drug-free person, and to provide the basis for a conclusion that such conduct will not continue or recur in the future. Under the evidence presented, where punishment has failed, laws have been flouted, and a fiduciary responsibility has been ignored, I am not confident that Applicant's substance abuse is a thing of the past, or that it will not recur.

I do not take this position lightly, but based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my evaluation of the evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under Enclosure 2 of the Directive, I believe that Applicant has failed to mitigate or overcome the Government's case. The evidence leaves me with grave questions and doubts as to Applicant's continued security eligibility and suitability. Accordingly, allegations 1.a. through 1.f. of the SOR are concluded against Applicant.

Applicant's experimentation with cocaine on several occasions during 1978 and 1986-87 has not been repeated thereafter, and I consider such abuse to be stale, with little current security significance. Thus, I conclude that Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the Government's case. Accordingly, allegation 1.g. of the SOR is concluded in favor of Applicant.

Applicant's suicidal gestures and suicide attempts occurred through repeated overdosing on a variety of prescribed medications in 1965 and 1978. While not repeated thereafter, in the absence of further evidence as to her current emotional and psychological stability, they create grave questions and doubts as to Applicant's continued security eligibility and suitability. Applicant had been diagnosed by credentialed mental health professionals as having emotional, mental, and personality disorders, identified as depressive reaction; severe depressive reaction; severe depressive reaction with suicidal ideation; and schizophrenia, latent type. In each instance, she was drawn to drugs -- in this case, prescription drugs -- and, in each instance, she abused quantities of those substances -- almost resulting in her demise.

Applicant has offered no evidence that the conditions which led to those actions were temporary conditions, or that they have been cured or gone into remission, with a low probability of recurrence or exacerbation. Instead, I am left with the potential of additional substance abuse should one of those conditions recur. Upon balance, after evaluating the evidence, I believe that Applicant has failed to mitigate or overcome the Government's case. Accordingly, allegations 1.h. through 1.j. of the SOR are concluded against Applicant.

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

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth 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.: For the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: 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.

Robert R. Gales

Chief Administrative Judge

1. It appears that Applicant initially may have requested a hearing, and that one had been scheduled for September 10, 1996, before Administrative Judge Kathryn Moen Braeman, but that upon her further consideration, she chose, instead, to have her case decided on the written record. *See*, Response to SOR.

2. The Government submitted eight items in support of its contentions.

3. Administrative Judge Paul J. Mason was apparently assigned the case after the scheduled hearing had been canceled.

4. While Applicant had admitted using hashish, no evidence of such use was offered to provide specifics of such use, and hashish use has not been alleged in the SOR.

5. *See*, Item 8.

6. So written on July 28, 1995. *See*, Item 3, at 5.

7. So written on September 20, 1995, citing the legal risk and feeling like an addict. *See*, Item, 4, at 2. *See also*, Item 5, at 3, wherein Applicant wrote on September 15, 1994, that she was not sure if she could abstain for any length of time without counseling.

8. So stated on October 10, 1980. *See*, Item 8, at 3.

9. *See*, Item 5, at 3.

10. *See*, Item 4, at 2.

11. *See*, Item 5, at 3; and Item 6, at 2.

12. A credentialed medical professional is defined as a licensed physician, licensed clinical psychologist, or board certified psychiatrist.

13. *See*, Executive Order 12968, "*Access to Classified Information*;" as implemented by Department of Defense Regulation 5200.2-R, "*Personnel Security Program*," dated January 1987, as amended by Change 3, dated November 8, 1995. However, the Directive uses both "clearly consistent with the national interest" (*see*, Sec. B.3; Sec. C.2.; and Sec. D.2.; Enclosure 3, Sec. 1.; and Sec. 25), and "clearly consistent with the interests of national security" (*see*, Enclosure 2 (Change 3), Adjudicative Guidelines, at 2-2).