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Applicant for security clearance

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February 12, 1997

ISCR OSD Case No. 96-0302

**DECISION OF ADMINISTRATIVE JUDGE**

**WILFORD H. ROSS**

**APPEARANCES**

**FOR THE GOVERNMENT FOR THE APPLICANT**

Martin H. Mogul, Esq. Theodore C. Jarvi, Esq.

Department Counsel

**STATEMENT OF THE CASE**

On June 13, 1996, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) 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 recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on August 12, 1996, and requested to have her 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 September 13, 1996. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. The Applicant received the Government's written case on September 19, 1996. The Applicant did not file a response to the FORM. The case was received by the undersigned for resolution on October 23, 1996.

## **FINDINGS OF FACT**

The Applicant is 35, single and has a 12th grade education. She is employed by a defense contractor as an assembler, and she seeks to obtain a DoD security clearance in connection with her employment in the defense sector.

The Government opposes the Applicant's request for a continued security clearance, based upon the allegations set forth in the attached Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and criterion in the SOR. They are based on the Applicant's Answer to the SOR with its attachments, and the Government's exhibits.

Paragraph 1 (Criterion H - Drug involvement). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she abuses illegal drugs.

The Applicant first began using marijuana in approximately 1974. In the beginning she used marijuana on a weekly to monthly basis. From 1979 to 1981 she used marijuana on a daily basis and "believed I was a pothead." (Government Exhibit 7 at page 2.) During the period 1981 to 1984 the Applicant used marijuana about three times total because she was pregnant and, subsequently, had small children to care for. Her use of marijuana increased to monthly use from 1984 through 1987. She did not use marijuana in 1987 and 1988. Beginning in approximately 1990, the Applicant began to use marijuana again. Until she stopped all drug use in December 1994, the Applicant used marijuana with a frequency that varied from daily use to twice a month use to no use for long periods. Her period of most sustained use during the time after 1990 was January to August 1994, when she used marijuana weekly. She expresses an intent not to use marijuana or any other illegal drug in the future.

As stated in the above paragraph, the Applicant did not use marijuana during 1987 and the early part of 1988. The reason is that the Applicant was addicted to the form of crystal methamphetamine know as "crank" during that time. There is a factual disagreement between her statement in Government Exhibit 7 at page 3 and the Applicant's Answer at page 1 as to whether this drug use took place in 1987 through 1988 or 1988 through 1989. Government Exhibit 9 indicates that she first entered treatment for amphetamine abuse in March 1988. Accordingly, that date is accepted as the most appropriate one to mark the end of the period of "crank" use. The Applicant has not used "crank" since this period of treatment.

Beginning in approximately 1991, the Applicant began using a different form of crystal methamphetamine. "I felt addicted to CM (crystal methamphetamine) beginning in approximately 1992." (Government Exhibit 7 at page 2.) Her use increased and by early 1993 she was using the drug on a daily basis. During 1993 the frequency of the Applicant's drug use declined. During the period January to August 1994, she used crystal methamphetamine about five times a month. As stated earlier, the Applicant stopped all drug use in December 1994, and expresses an intent not to use any drugs in the future. The Applicant occasionally purchased the drug during the period she was using it.

The Applicant used cocaine from 1983 until 1988. Her period of greatest use was 1984 when, by her own admission, she was addicted to cocaine. (Government Exhibit 7 at page 3.) The Applicant stopped using cocaine in 1988, and expresses a credible intent not to use cocaine in the future.

The Applicant's use of Quaaludes, LSD, amphetamines, PCP and Valium is in the distant past, has not been repeated and has no current security significance. SOR subparagraphs l.g., h., I., j. and k. will be found for the Applicant.

The Applicant attended drug/alcohol treatment programs in 1988 (Government Exhibit 9), and 1993 (Government Exhibit 8). At the conclusion of both treatment programs the Applicant returned to the use of illegal drugs. The Applicant states on page 2 of her Answer, "I have not used drugs for over two years and I am currently not using drugs. I occasionally attend narcotics anonymous meetings and have a firm commitment to continue my life without the use of any drugs."

Paragraph 2 (Criterion G - Excessive alcohol consumption). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she consumes intoxicants to excess.

The Applicant began using alcohol in approximately 1974. Her use increased and, according to the Applicant, "I have

been an alcoholic but I do not intend to abuse alcohol in the future." (Government Exhibit 7 at page 4.) Her period of greatest alcohol abuse was from 1979 to 1989. During those years she would drink to the point of intoxication on a weekly to monthly basis. She was arrested for Driving While Intoxicated in 1985. From 1990 to 1993, the Applicant drank to the point of intoxication on a monthly basis. (Government Exhibit 5 at page 2.) She did not drink any alcohol from 1993 to 1995. From 1995 to the present the Applicant has drunk alcohol occasionally on a social basis. She has not become intoxicated. As stated above, she attended an alcohol treatment program in 1988 and 1993. She intends to drink socially in the future.

Paragraph 3 (Criterion J - Criminal activity). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has engaged in criminal acts.

The Applicant was arrested on July 21, 1994, and charged with Child Abuse, a felony in the jurisdiction in which it occurred. <sup>(1)</sup> It was alleged that, on April 19, 1994, the Applicant had struck the eight year old daughter of her boyfriend repeatedly on the buttocks with a wooden spoon, leaving bruises. The child did have bruises in that area, but the Applicant has consistently maintained that she did not cause them. Subsequently, on September 19, 1994, the Applicant plead guilty to a charge of Child Abuse (Criminal Negligence) as part of a plea bargain. The charge she plead to is described as an undesignated, nondangerous and nonrepetitive offense. She was subsequently sentenced to two years probation, required to attend anger control/parenting counseling, and pay probation fees of \$20 per month. Her probation was terminated early and the offense was classified as a misdemeanor on June 11, 1996. (Government Exhibit 3, Attachment A.)

Mitigation. The Applicant submitted a letter from her Production Supervisor. (Government Exhibit 3, Attachment B.) In this letter it is stated, "(The Applicant) has demonstrated well above average level of knowledge and uses good sound judgment when exercising her skills and decision making process. . . . She demonstrates a sense of high morals and is very clear that integrity is of utmost importance to her."

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 and Section F.3. of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

### Criterion H (Drug involvement)

#### Conditions that could raise a security concern:

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

#### Conditions that could mitigate security concerns:

- (3) a demonstrated intent not to abuse any drugs in the future.

### Criterion G (Alcohol consumption)

#### Conditions that could raise a security concern:

- (1) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol abuse;

(4) habitual or binge consumption of alcohol to the point of impaired judgment;

Conditions that could mitigate security concerns:

(1) the alcohol related incidents do not indicate a pattern;

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

(3) positive changes in behavior supportive of sobriety;

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:

(None of the stated conditions have application in this case.)

(1) the criminal behavior was not recent;

(2) the crime was an isolated incident;

(5) there is clear evidence of successful rehabilitation.

In addition, as set forth in Enclosure 2 of the Directive at page 2-1, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors (General Factors):

a. The nature, extent and seriousness of the conduct

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

c. The frequency and recency of the conduct

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

e. The voluntariness of participation

f. The presence or absence of rehabilitation and other pertinent behavior changes

g. The motivation for the conduct

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

i. The likelihood of continuation or recurrence."

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

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 acts of drug,

alcohol and child abuse, that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

## **CONCLUSIONS**

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting of a security clearance. If such a *prima facie* case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's *prima facie* case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by *prima facie* evidence that the Applicant has used illegal drugs (Criterion H); abused alcohol (Criterion G); and engaged in misdemeanor criminal activities (Criterion J).

The Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's *prima facie* case against her, except in part. Under Paragraph 1 (Criterion H), as set forth above, subparagraphs 1.g. thru 1.k. are found for the Applicant as the specific drug use has been mitigated by time. Paragraph 2 (Criterion G) is found for the Applicant as the Government failed to prove that the Applicant has a current alcohol abuse problem. Her current alcohol use is worrisome, but is not of a nature to mandate a finding against the Applicant on this allegation. Regarding Paragraph 3 (Criterion J), this serious offense occurred almost three years ago, her probation was terminated early, and there is no evidence that such incidents have been repeated in the recent past.

Applicant's crystal methamphetamine and marijuana use ended approximately two years before the record closed. Given the long extent of Applicant's drug use, coupled with her two failed rehabilitation attempts, it is simply too soon for me to conclude with confidence that she will not return to the use of illegal drugs.

The Applicant's efforts at reform are noted, and she is commended for her decision to refrain from further drug use. Under the particular circumstances of this case, this evidence does not overcome the adverse information that has been presented by the Government.

On balance, it is concluded that the Applicant has failed to overcome the Government's information opposing her request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons. As set forth above, Paragraphs 2 and 3 are found for the Applicant.

## **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: Against the Applicant.

Subparagraphs 1.a.: Against the Applicant. Subparagraphs 1.b.: Against the Applicant. Subparagraphs 1.c.: Against the

Applicant. Subparagraphs 1.d.: Against the Applicant. Subparagraphs 1.e.: Against the Applicant. Subparagraphs 1.f.: Against the Applicant. Subparagraphs 1.g.: For the Applicant. Subparagraphs 1.h.: For the Applicant. Subparagraphs 1.i.: For the Applicant. Subparagraphs 1.j.: For the Applicant.

Subparagraphs 1.k.: For the Applicant.

Subparagraphs 1.l.: For the Applicant.

Subparagraphs 1.m.: For the Applicant.

Subparagraphs 1.n.: Against the Applicant.

Paragraph 2: For the Applicant.

Subparagraph 2.a.: For the Applicant.

Subparagraph 2.b.: For the Applicant.

Subparagraph 2.c.: For the Applicant.

Subparagraph 2.d.: For the Applicant.

Subparagraph 2.e.: For the Applicant.

Paragraph 3: For the Applicant.

Subparagraph 3.a.: For 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.

Wilford H. Ross

Administrative Judge

1. The evidence concerning SOR subparagraph 3.a. is found in Government Exhibits 7, 10, 11 and 12.