

Date: December 30, 1996

In Re:

SSN: -----

Applicant for Security Clearance

DOHA Case No. 96-0386

DECISION OF ADMINISTRATIVE JUDGE

ROBERT R. GALES

APPEARANCES

FOR THE GOVERNMENT FOR THE APPLICANT

Carla Conover, Esquire

Department Counsel

Pro se

STATEMENT OF CASE

On May 30, 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 a sworn written statement, dated June 11, 1996, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on a written record, in lieu of a hearing. Department Counsel submitted the Government's written case on September 5, 1996. A complete copy of the file of relevant material (FORM)⁽¹⁾ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He apparently chose not to do so within the prescribed 30-day period. The case was initially assigned to Administrative Judge John G. Metz, Jr., on November 14, 1996, but due to caseload considerations, was subsequently reassigned to, and received by, this Administrative Judge, on December 26, 1996.

FINDINGS OF FACT

Applicant has admitted nearly all of the factual allegations pertaining to drug involvement under Criterion H (subparagraphs 1.a. through 1.f., and 1.h. through 1.m.); alcohol consumption under Criterion G (subparagraphs 2.a.

through 2.f., except for a portion of 2.d.); personal conduct under Criterion E (subparagraphs 3.b., 3.c., and 3.e.); and criminal conduct under Criterion J (subparagraph 4.a.). Those admissions are hereby incorporated herein as findings of fact. He denied the remaining subparagraphs, or portions thereof.

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 thirty-five year old male employed by a defense contractor, and he is seeking to retain the SECRET clearance which had previously been granted to him in October 1989. He had also previously been granted a TOP SECRET clearance in April 1984, July 1989, and again in June 1993.

Applicant has been a poly-substance abuser whose choice of substances has been primarily marijuana and crack cocaine, but who has also abused a variety of other illegal substances.⁽²⁾ He first experimented with hashish during the summer of 1978, while residing with his family overseas, and continued using it about one time each weekend, until about July 1979. His last such use occurred in July 1979, and there is no evidence to rebut his contention that he has abstained since that time.

As Applicant phased out his hashish abuse, he commenced abusing marijuana,⁽³⁾ initially due to peer pressure, during the summer of 1979. From that initial exposure, to about April 1995, his use varied from one time every six weeks to several "joints" on a daily basis. In April 1995, and continuing until December 1995, Applicant abstained. He resumed his abuse of marijuana briefly in January 1996, and then it ceased. There is no evidence to rebut his contention that he has abstained since that time.

During the mid-1980s, Applicant started snorting and smoking cocaine. His frequent abuse of cocaine continued until he was introduced to crack cocaine on New Year's Eve, at the end of 1991, when it tapered off and was succeeded by the newer more potent substance.⁽⁴⁾ After abusing crack cocaine every weekend until June 1992, he eventually became addicted to it and abused crack cocaine on a daily basis until September 1992. Although he managed to briefly abstain in September-October 1992, he resumed its use, and last abused crack cocaine in April or May 1993. Applicant claims that "most of the time" he does not think of cocaine, but admits that it is hard.⁽⁵⁾ This would seem to indicate that there are times when he continues to think about it. Nevertheless, there is no evidence to rebut his contention that he has abstained since April or May 1993.

During a one or two week period in 1980-81, Applicant abused amphetamines identified as "white crosses."⁽⁶⁾ There is no evidence to rebut his contention that he has abstained since that time.

Applicant experimented, on a one-time basis, in 1987-88, with hallucinogenic mushrooms.⁽⁷⁾ There is no evidence to rebut his contention that he has abstained since that time.

During a three week period in 1991, on three occasions, Applicant also experimented with lysergic acid diethylamide (LSD).⁽⁸⁾ There is no evidence to rebut his contention that he has abstained since that time.

Applicant purchased varying quantities of hashish, marijuana, cocaine, and crack cocaine during the periods in which he abused those particular substances. In addition, during his period of crack cocaine abuse, Applicant frequently acted as the "middle man" to facilitate the trafficking and distribution of the substance.⁽⁹⁾ In that position, for his efforts, he sometimes received some of the substance for his own use, delivered the substance to buyers, and periodically collected payments for the substance from those buyers. His most recent involvement in that activity occurred in 1993.

Applicant also consumed alcohol, at times to excess and to the point of intoxication, from about 1974 to at least December 1995. He initially started drinking while in the sixth grade, and generally would share a bottle of wine with about ten other people. Over time, his consumption increased from one time per week to 12 beers per night, six nights per week. Periods of excessive consumption leading to intoxication and blackout were interrupted by periods of abstinence. While his alcohol consumption has diminished, he continues to drink and, on occasion, drive when he has done so.

As a result of his consumption of alcohol, Applicant has been involved in three incidents. In June 1980, and again in March 1984, after having consumed varying quantities of alcohol, he was cited for drinking in public -- the legal characterization for urinating in public. In August 1995, after consuming between eight and ten beers, he drove his automobile into another vehicle, and as a result, lost his driving privileges for one year.

On August 21, 1992, and continuing until August 25, 1992, Applicant underwent inpatient detoxification for a condition diagnosed as psychoactive substance dependence. The three substances identified were daily abuse of crack cocaine, three to six times a week abuse of alcohol, and daily abuse of marijuana and hashish. After being successfully discharged from the program, he was enrolled in an outpatient substance abuse and rehabilitation program on September 14, 1992, for a condition diagnosed as cocaine dependency and cannabis dependency with alcohol use. The outpatient program consisted of eight to nine hours of daily group and individual therapy, and was scheduled to continue for 30 days.

Among the requirements of the program were abstinence and undergoing periodic urinalysis. Applicant declined to take his prescribed Antabuse, and refused to stop smoking or consuming alcohol,⁽¹⁰⁾ and was eventually identified through a positive urinalysis, as having continued abusing cocaine and marijuana, while in the program.⁽¹¹⁾ Applicant admitted having used marijuana during the previous week, but was adamant in denying the use of cocaine. When directed to undergo another urinalysis, he refused to do so, and acknowledged that he was not ready to cease his abuse of marijuana.⁽¹²⁾ Applicant left the program prematurely on October 2, 1992,⁽¹³⁾ and moved in with friends who were marijuana users.⁽¹⁴⁾ As a result of his refusal to comply with program rules, he was discharged from the program,⁽¹⁵⁾ and his prognosis was considered to be poor.

Applicant contended he had followed the failed program up with attendance at meetings of Narcotics Anonymous (NA) for a period of six months, but he has offered no evidence to support his contention.

Applicant acknowledges that he was addicted to cocaine, and has vowed to never use illegal drugs in the future. As far as alcohol use is concerned, however, he denies the existence of a current problem, and intends to continue consuming alcohol in a "responsible" manner.

Applicant completed the privacy section of a PSQ on July 31, 1989,⁽¹⁶⁾ and in response to an inquiry pertaining to ever having been arrested, charged, cited, held, or detained by law enforcement authorities,⁽¹⁷⁾ Applicant responded "no." He certified that his PSQ response was true, complete, and accurate. It was false. He had lied, falsified, omitted, and concealed his true history of arrests, as described above.

Applicant completed the privacy section of an NAQ on March 13, 1995,⁽¹⁸⁾ and in response to an inquiry pertaining to ever having been arrested, charged, cited, held, or detained by law enforcement authorities,⁽¹⁹⁾ Applicant responded "no." He certified that his NAQ response was true, complete, and accurate. It was false. He had lied, falsified, omitted, and concealed his true history of arrests, as described above. Applicant initially defended his response to the fact that he did not consider the incidents of being cited for urinating in public to be arrests of the type referred to in the question.⁽²⁰⁾ However, he subsequently attributed his falsification to a fear of jeopardizing his security clearance and possibly losing his job, and his effort to have consistent response to the question.⁽²¹⁾

Applicant completed the privacy section of a PSQ on April 6, 1984,⁽²²⁾ and in response to an inquiry pertaining to ever having used a variety of illegal substances, including narcotics, depressants, stimulants, hallucinogens, and cannabis,⁽²³⁾ Applicant responded "no." He certified that his PSQ response was true, complete, and accurate. It was false. He had lied, falsified, omitted, and concealed his true history of substance abuse, as described above.

Applicant completed the privacy section of a PSQ on July 31, 1989, and in response to an inquiry pertaining to ever having used a variety of illegal substances, including narcotics, depressants, stimulants, hallucinogens, and cannabis,⁽²⁴⁾ Applicant responded "no." He certified that his PSQ response was true, complete, and accurate. It was false. He had lied, falsified, omitted, and concealed his true history of substance abuse, as described above.

Applicant completed the privacy section of an NAQ on March 13, 1995, and in response to an inquiry pertaining to ever having tried or used a variety of illegal substances, including narcotics, depressants, stimulants, hallucinogens, and cannabis,⁽²⁵⁾ Applicant responded "yes," and added that he had experimented with hashish and marijuana during high school.⁽²⁶⁾ He certified his NAQ responses were true, complete, and accurate. They were false. He had lied, falsified, omitted, and concealed his true history of substance abuse, as described above. Applicant initially defended his action and claimed that his omission of cocaine was unintentional, but acknowledged that he had been struggling with whether or not to include it as a substance abused.⁽²⁷⁾ He believed that he had added another sheet to the NAQ, but was unable to verify that supposed additional entry pertaining to cocaine. However, he subsequently attributed his falsification to a fear of jeopardizing his security clearance and possibly losing his job, and his effort to have consistent response to the question.⁽²⁸⁾

Applicant completed the privacy section of a PSQ on April 6, 1984, and in response to an inquiry pertaining to ever having been involved in the illegal purchase, possession, or sale of such substances,⁽²⁹⁾ Applicant responded "no." He certified that his PSQ response was true, complete, and accurate. It was false. He had lied, falsified, omitted, and concealed his true history of substance abuse, as described above.

Applicant completed the privacy section of a PSQ on July 31, 1989, and in response to an inquiry pertaining to ever having been involved in the illegal purchase, possession, or sale of such substances,⁽³⁰⁾ Applicant responded "no." He certified that his PSQ response was true, complete, and accurate. It was false. He had lied, falsified, omitted, and concealed his true history of substance abuse, as described above.

Applicant completed the privacy section of an NAQ on March 13, 1995, and in response to an inquiry pertaining to ever having been involved in the illegal purchase, possession, or sale of such substances,⁽³¹⁾ Applicant responded "no." He certified that his NAQ response was true, complete, and accurate. It was false. He had lied, falsified, omitted, and concealed his true history of substance abuse, as described above. Applicant initially defended his response and claimed that he did not consider his actions as a "middle man" in drug transactions to constitute trafficking.⁽³²⁾ He offered no explanation for his failure to acknowledge his past drug purchases. However, he subsequently attributed his falsification to a fear of jeopardizing his security clearance and possibly losing his job, and his effort to have consistent response to the question.⁽³³⁾

Applicant completed the privacy section of a PSQ on April 6, 1984, and in response to an inquiry pertaining to alcohol ever resulting in the loss of a job, arrest, or treatment for alcoholism,⁽³⁴⁾ Applicant responded "no." He certified that his PSQ response was true, complete, and accurate. It was false. He had lied, falsified, omitted, and concealed his true history of alcohol abuse, as described above.

Applicant completed the privacy section of a PSQ on July 31, 1989, and in response to an inquiry pertaining to alcohol ever resulting in the loss of a job, arrest, or treatment for alcoholism,⁽³⁵⁾ Applicant responded "no." He certified that his PSQ response was true, complete, and accurate. It was false. He had lied, falsified, omitted, and concealed his true history of alcohol abuse, as described above.

Applicant completed the privacy section of an NAQ on March 13, 1995, and in response to an inquiry pertaining to alcohol ever resulting in the loss of a job, arrest, or treatment for alcoholism,⁽³⁶⁾ Applicant responded "no." He certified that his NAQ response was true, complete, and accurate. It was false. He had lied, falsified, omitted, and concealed his true history of alcohol abuse, as described above. Applicant initially defended his response and claimed that he did not consider his detoxification and counseling to have been for his alcohol abuse, but rather for his cocaine dependency.⁽³⁷⁾

On December 19, 1995, Applicant was interviewed by a DIS agent, pertaining to substance abuse, and he admitted that he had used marijuana and hashish in high school and the summer of 1979; that he had used cocaine only in 1992; and that he had purchased only cocaine. He stated that he had used no illegal drugs since he had entered detoxification in September 1992. He certified and swore that his statement was true, complete, and accurate. It was false. He had again lied, falsified, omitted, and concealed his true history of substance abuse, as described above. He subsequently attributed

his falsification to a fear of jeopardizing his security clearance and possibly losing his job, and his effort to have consistent responses on the issue.⁽³⁸⁾

On February 21, 1996, Applicant was again interviewed by a DIS agent, pertaining to substance abuse, and he finally admitted that he had previously lied, falsified, omitted, and concealed the true extent of his history of substance abuse, as described above. Applicant gave the same explanations, as described above, for his falsifications.

Applicant has been employed by his current employer since March 1995. He had been fired from his previous employer when he had entered detoxification in August 1992.⁽³⁹⁾ A characterization of his work performance has not been offered into evidence.

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 to make 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. 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:

- (1) the drug involvement was not recent;
- (3) a demonstrated intent not to abuse any drugs in the future;

[Alcohol Consumption - Criterion G]: Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

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

- (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 use;
- (3) diagnosis by a credentialed medical professional⁽⁴⁰⁾ 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 include:

None apply.

[Personal Conduct - Criterion E]: 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;
- (4) personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or pressure;
- (5) a pattern of dishonesty or rule violations;

Conditions that could mitigate security concerns include:

- (5) the individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or pressure;

[Criminal Conduct - Criterion J]: 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;

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." 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 involvement with a virtual cornucopia of illegal substances -- hashish, marijuana, cocaine, crack cocaine, amphetamines, hallucinogenic mushrooms, and LSD, including his use, possession, and purchase of some of those substances, initially commenced as experimental abuse of hashish, in 1978, but soon escalated to regular abuse of marijuana, and frequent abuse of cocaine, followed by addiction to crack cocaine. Along the way, he dabbled in amphetamines, hallucinogenic mushrooms, and LSD, and trafficked as a "middle man" for crack cocaine. As his frequency of abuse differed with each illegal substance abused, so did the duration of such abuse, and the cessation dates. His substance abuse ceased in 1979 (for hashish), 1980-81 (for amphetamines), 1987-88 (for hallucinogenic mushrooms), 1991 (for LSD), 1993 (for crack cocaine), and 1996 (for marijuana).

In choosing to abuse marijuana, cocaine, crack cocaine, hallucinogenic mushrooms, and LSD, especially that abuse which occurred after having been granted a TOP SECRET security clearance in April 1984, July 1989, and June 1993,

and a SECRET security clearance in October 1989, Applicant has demonstrated the relative lack of importance his fiduciary responsibilities towards the Government or the drug laws have *vis-a-vis* his drug-induced social pleasures.

While it appears that no illegal substance is now being used, the period of abstinence for each identified substance, as stated above, along with the absence of positive evidence of drug treatment and rehabilitation, are significant. Applicant's continuing abstinence is to be encouraged, but the current period of abstinence is still relatively brief, too brief, in light of his substance abuse history. In this instance, I believe that both the *successful completion* of a drug treatment and rehabilitation program, as well as a longer period of abstinence should be required to demonstrate the truly successful completion of a transformation from long-term illegal substance abuser to an 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, I am not comfortably confident that Applicant's substance abuse is a thing of the past, or that it will not recur.

To the contrary, Applicant's actions in ignoring the rules and restrictions of his treatment and rehabilitation program; his rejection of the smoking ban; his unwillingness to abstain from alcohol; his continued abuse of marijuana and cocaine; and his resistance to undergoing a routine urinalysis; as well as his premature departure from the program, are undeniably factors against him. In fact, while the program officials have cast his performance and departure from treatment and rehabilitation in a negative light, and characterized his prognosis as poor, Applicant continues to deny the gravity of the situation, and devises an alternate explanation for his premature departure as the result of his nervousness over making a five minute exit speech presentation. Applicant, a former crack cocaine addict and trafficker, was merely detoxified. He was not cured or rehabilitated.

Moreover, as additional evidence of his failure in treatment and rehabilitation, after his premature October 1992 departure from the treatment and rehabilitation program, Applicant continued to abuse crack cocaine until May 1993, and marijuana until January 1996, despite the possession of a security clearance.

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 suitability. Accordingly, allegations 1.a. through 1.g., 1.l., and 1.m., of the SOR are concluded against Applicant.

Applicant's experimentation with hallucinogenic mushrooms ceased in 1987-88 -- eight or nine years ago, and LSD, in 1991 -- five years ago. Likewise, his occasional abuse of amphetamines during a one or two week period in 1980-81 -- 15 or 16 years ago, ceased at that time, and his more frequent abuse of hashish, ceased in 1979 -- 17 years ago. In no instance is there evidence that such the abuse of those illegal substances continued thereafter. Accordingly, although Applicant's treatment and rehabilitation, in general, was unsuccessful, considering the duration of Applicant's actual abstinence from these particular illegal substances, I consider his abuse of them to be of 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, allegations 1.h. through 1.k. of the SOR are concluded in favor of Applicant.

With respect to Criterion G, the Government has established its case. Applicant's alcohol abuse has resulted in behavior that adversely affected his judgment and reliability, and led to periodic and episodic impairment or intoxication, including monthly blackouts, during which Applicant abandoned varying degrees of reason, caution, responsibility, and acceptable conduct. On two such occasions, his excessive consumption of alcohol resulted in being cited for drinking in public. On one occasion, in August 1995 -- approximately three years after prematurely departing treatment and rehabilitation, after he had consumed eight to ten beers, he drove his automobile into another vehicle, and eventually lost his driving privileges for one year.

Of significant concern was Applicant's abandonment of the treatment and rehabilitation program requirements which called for abstinence and the taking of Antabuse. In doing so, he ignored the recommendations of credentialed medical professionals and simply continued what he chose to do, regardless of the implications of doing so. Even the loss of his

driving privileges for one year following an alcohol-related automobile accident could not dissuade him from continued consumption of alcohol.

Applicant effectively precluded acceptance of mitigating factor (4) because he has failed to comply with several segments of that mitigating factor. He did not successfully complete the rehabilitation program, did not abstain, and did not receive a "favorable" prognosis by a credentialed medical professional.

In light of his continued consumption of alcohol, and his stated intention to do so in the future, I remain concerned regarding the long-term effectiveness of Applicant's rehabilitation, and the level of his acceptance of his condition. When afforded opportunities to be candid regarding his alcohol abuse, he has denied the continuing presence of a problem, and contended that he could handle it without further treatment; and he has minimized the true extent of the problem. There are simply too many variables, with loose ends, to satisfy my concern regarding my unfavorable impressions of Applicant's motivation, rehabilitation, and candor.

Under the circumstances, I simply do not believe that there is sufficient demonstration of a successful completion of a transformation from a long-term alcohol abuser to a motivated abstinent person, and to provide the basis for a conclusion that such conduct will not continue or recur in the future. Under the evidence presented, I possess no confidence that Applicant's alcohol abuse is a thing of the past, or that it will not recur. Thus, 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 2.a. through 2.f. of the SOR are concluded against Applicant.

With respect to Criterion E, the Government has established its case. There is little dispute surrounding Applicant's deceptive actions or his purposes, for he has admitted the essential elements of the allegations. Notwithstanding his certifications, oaths, and affirmations that his responses were true and accurate, on four occasions, in April 1984, July 1989, March 1995, and December 1995, the first two of which are not alleged in the SOR, Applicant willfully falsified, omitted, and concealed material facts pertaining to his history of substance abuse. It was only when he was confronted with another DIS interview, nearly 12 years after the initial false PSQ responses, and two months after the latest DIS interview, that the truth became known. Applicant attributed his actions to a fear that the truth might negatively impact his job and his security clearance, and the importance of his efforts to be consistent with earlier responses. In this instance, I have no evidence of inadvertent or accidental oversight, but rather calculated and deliberate omissions of information which Applicant chose not to reveal simply because he felt it necessary to protect his interests. Applicant's concerns for the national security at that time were obviously less significant or possibly non-existent.

Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. The nature of Applicant's offense therefore poses a serious potential risk to the nation's security precautions which go to the very heart of the nation's security system.

Applicant's eventual admissions regarding his history of substance abuse does not lessen or minimize, much less erase or nullify, the impact of his earlier concealments, omissions, and deceptions. In this instance, deception was actively practiced by Applicant over a 12 year period, with the most recent incident occurring about 10 months prior to the closing of the record. While he has seemingly taken the positive step of finally being candid about his substance abuse history to reduce or eliminate vulnerability to exploitation, there is no evidence of rehabilitation or other pertinent behavioral changes to enable me to conclude that similar actions might not recur. In light of the repeated false certifications and oaths, as well as the lengthy periods following those falsifications, during which he remained silent as to the truth, under the circumstances, his security-suitability, in the face of the negative inferences to be drawn, is suspect and, considering the nation's security is at stake, is to be resolved against him. Thus, I conclude that Applicant has failed to mitigate or overcome the Government's case. Accordingly, allegations 3.a. through 3.e. of the SOR are concluded against Applicant.

With respect to Criterion J, the Government has established its case. Statements made by an applicant for access to classified information, both in questionnaires and to investigators, encompass matters within the jurisdiction of the Department of Defense, and are provided for under Title 18, United States Code, Section 1001. ⁽⁴¹⁾ Applicant's

deceptions fit well within the ambit of that provision. His explanations for failing to accurately relate his history of substance abuse, simply will not justify or exonerate such action. I conclude, therefore, that Applicant's felonious conduct -- falsifications, omissions, and concealments (deception) of his substance abuse history, on the two alleged occasions (March 1995 and December 1995), were material and made in a knowing and willful manner in contravention of Title 18, United States Code, Section 1001. Thus, I conclude that Applicant has failed to mitigate or overcome the Government's case. Accordingly, allegation 4.a. of the SOR is 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.: Against the Applicant

Subparagraph 1.h.: For the Applicant

Subparagraph 1.i.: For the Applicant

Subparagraph 1.j.: For the Applicant

Subparagraph 1.k.: For the Applicant

Subparagraph 1.l.: Against the Applicant

Subparagraph 1.m.: Against the Applicant

Paragraph 2. Criterion G: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against the Applicant

Subparagraph 2.d.: Against the Applicant

Subparagraph 2.e.: Against the Applicant

Subparagraph 2.f.: Against the Applicant

Paragraph 3 Criterion E: AGAINST THE APPLICANT

Subparagraph 3.a.: Against the Applicant

Subparagraph 3.b.: Against the Applicant

Subparagraph 3.c.: Against the Applicant

Subparagraph 3.d.: Against the Applicant

Subparagraph 3.e.: Against the Applicant

Paragraph 4 Criterion J: AGAINST THE APPLICANT

Subparagraph 4.a.: 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. The Government submitted 13 items in support of its contentions.
2. Applicant has been afforded several opportunities, over a multi-year period, to furnish detailed scenarios of his substance abuse history, and in doing so, his stories have been inconsistent. He has denied prior use of any illegal substances, or the abuse of alcohol, or substance abuse treatment; modified his denials by admitting limited experimentation with hashish and marijuana, while in high school; softened his denials by admitting more recent abuse of hashish and marijuana, as well as the limited abuse of cocaine; admitted more extensive substance abuse, as well as treatment; and consequently admitted much more extensive substance abuse, to the point of addiction. Applicant eventually admitted that he had lied on several Personnel Security Questionnaires (PSQ), and on a National Agency Questionnaire (NAQ), as well as to the Defense Investigative Service (DIS), and subsequently modified his earlier denials as well as his earlier admissions. In reconstructing his substance abuse history, I have created a mosaic of his various admissions, along with other evidence, and I find this mosaic to represent the actual facts.
3. *See*, Item 8, at 1-2; Item 9, at 1; and Item 13, at 4.
4. *See*, Item 8, at 2-3; and Item 13, at 4.
5. *See*, Item 9, at 2.
6. *See*, Item 8, at 2.
7. *Ibid.*
8. *Ibid.*
9. *Id.*, at 3; and Item 9, at 1-2.
10. *See*, Item 11.

11. *See*, Item 10, at 1-2.

12. *See*, Item 11.

13. Applicant averred that the only reason he is reflected to have not completed the program is his failure to make a five minute exit speech presentation. He said that he was simply too nervous to do so. *See*, Item 8, at 3.

14. *Ibid*.

15. *Ibid*. Applicant was deemed to be in a state of denial, and it was opined that although he was in need of inpatient treatment, his lack of motivation disqualifies him from such treatment.

16. *See*, Item 6, at 2.

17. Question 14.a.

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

19. Question 18.

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

21. *See*, Item 8, at 1.

22. *See*, Item 7, at 3.

23. Question 18.a.

24. Question 15.a.

25. Question 20.a.

26. *See*, Item 5, at 2.

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

28. *See*, Item 8, at 1.

29. Question 18.b.

30. Question 15.b.

31. Question 20.b.

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

33. *See*, Item 8, at 1.

34. Question 18.c.

35. Question 15.c.

36. Question 20.d.

37. *See*, Item 9, at 4.

38. *See*, Item 8, at 1.

39. It should be noted that Applicant has admitted stealing money from a previous employer to facilitate his purchase of drugs. *See*, Item 12, at 15.

40. "Credentialed medical professional" is defined as a licensed physician, licensed clinical psychologist, or board certified psychiatrist.

41. The cited provision provides, in relevant part, as follows: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up a . . . material fact . . . shall be fined not more than \$10,000 or imprisoned not more than five years, or both."