

Date: November 21, 1996

In Re:  
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SSN: -----

Applicant for Security Clearance

ISCR Case No. 96-0397

**DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT R. GALES**

**APPEARANCES**

**FOR THE GOVERNMENT FOR THE APPLICANT**

Claude R. Heiny, II, Esquire

Department Counsel

*Pro se*

**STATEMENT OF CASE**

On May 31, 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 13, 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. Department Counsel submitted the Government's written case on August 13, 1996. A complete copy of the file of relevant material (FORM)(1) was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She declined to submit any response. The case was initially assigned to Administrative Judge John R. Erck on November 12, 1996, but due to caseload considerations, was subsequently reassigned to, and received by, this Administrative Judge on November 20, 1996.

**FINDINGS OF FACT**

Applicant has admitted nearly all of the factual allegations pertaining to drug involvement under Criterion H (subparagraphs 1.b. and 1.c., and a portion of 1.a.). 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:<sup>(2)</sup>

Applicant is a 32 year old female employed by a defense contractor, and she is seeking to retain a security clearance which was granted to her in October 1993.

Applicant has been a poly-substance abuser whose choice of illegal substances has been primarily marijuana, but who has also experimented with cocaine. She commenced using marijuana in 1983, when she was about 20 years of age, while in college, due to a combination of curiosity and peer pressure, in an effort to be popular and part of "the gang."<sup>(3)</sup> She continued to use marijuana, essentially on weekends, throughout the remainder of her college years, which were completed in May 1985. She apparently enjoyed the effect of marijuana, for she continued to use it occasionally during what she characterized as "special occasions" such as holidays and outings.<sup>(4)</sup> Her most recent use of marijuana occurred in February 1996, when she and a large group of girlfriends spent a "crazy weekend" in a coastal city.<sup>(5)</sup> She has not used marijuana since that time, and there is no evidence to rebut her contention regarding her most recent use.

Applicant's position regarding the use of marijuana is significant. She was aware that such use was against the law and corporate policy.<sup>(6)</sup> However, because she contends she has been "responsible" and discreet in her use of marijuana,<sup>(7)</sup> she believes it is alright to continue to do so. In fact, as recently as February 27, 1996 -- seven months after completing a National Agency Questionnaire in which she claimed to have ceased all substance abuse over a decade earlier -- she observed that if she were to use marijuana in the future, she would limit such use to two times per year.<sup>(8)</sup> However, on April 29, 1996, she reversed her position, and stated that she no longer had any intention to use marijuana in the future.<sup>(9)</sup>

On several occasions, characterized by Applicant as a "couple of times," during her college years, she experimented with cocaine by snorting it, while in the dormitory. She attributed her actions to curiosity.<sup>(10)</sup> She has not used the substance since 1983-85, and has vowed not to use it again in the future. There is no evidence to rebut her contentions regarding use or future intent.

Applicant has never undergone any drug treatment or rehabilitation as a result of her substance abuse.

Applicant has been employed by her present employer since January 1986.

## 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. 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:**

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

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,"<sup>(11)</sup> 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, especially that marijuana abuse which occurred while she was 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 1984 were not those of an immature adolescent, but rather of an adult in her 20s or 30s. It is to her credit that after experimenting with cocaine, she ceased doing so and never resumed such abuse. 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 legal status of her endeavor, she exhibited a pattern of questionable judgment, irresponsibility, and immature behavior, and continued her substance abuse for over two years after receiving 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 initial responses to inquiry regarding future intentions have answered those questions.

Applicant's continuing abstinence is to be encouraged, but the current period of abstinence is still relatively brief, too brief, in light of her substance abuse history. In this instance, I believe that both the successful completion of a drug treatment and rehabilitation program, as well as continued abstinence, for a period longer than the current seven months to the closing of the record, should be required to demonstrate the truly 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, 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. and 1.c. of the SOR are concluded against Applicant.

Applicant's experimentation with cocaine on a couple of occasions during her college years 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.b. of the SOR is concluded in favor of 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.: For the Applicant

Subparagraph 1.c.: 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.

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Robert R. Gales

Chief Administrative Judge

1. The Government submitted six items in support of its contentions.
2. Applicant has been afforded several opportunities to furnish detailed scenarios of her substance abuse history, and in doing so, her stories and estimates have been both deceptive and inconsistent. She has admitted limited use of marijuana, ceasing eleven years earlier than it actually did, and experimentation with cocaine; admitted more extensive use of marijuana, over a longer period of time; acknowledged the possibility of using marijuana in the future; and changed her declared intention. In reconstructing her substance abuse history, I have created a mosaic of her various admissions, along with other evidence, and I find this mosaic to represent the actual facts.
3. *See*, Item 4, at 6.
4. *See*, Item 5, at 1.
5. *See*, Item 3, at 2.
6. *See*, Item 5, at 2.
7. *Ibid*.
8. *Ibid*. Applicant stated:  
I cannot lie and say I'll never use [marijuana] again. If I do use [marijuana] again, it would be when under very discreet conditions and no more frequently than twice annually.
9. *See*, Item, 6, at 1-2. In her Response to the SOR, Applicant stated that since she is a good mother, raising two children, with another on the way, she certainly does not plan to abuse drugs in the future or with her children around. *See*, Item 3, at 2. Yet, it should be noted that, in the past, although she was a mother at the time, she did use marijuana.
10. *See*, Item 5, at 1.
11. *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).