

DATE: December 30, 1996

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 96-0411

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR THE GOVERNMENT

Earl C. Hill, Jr.

Department Counsel

FOR THE APPLICANT

Pro se

STATEMENT OF THE CASE

On 13 August 1996, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. By an undated letter received by DOHA in September 1996, Applicant answered the SOR and requested a hearing. The case was assigned to me on 30 September 1996. I set the case on 24 October 1996, issued a notice of hearing on 29 October 1996, and held the hearing 13 November 1996.

At the hearing, the Government presented six exhibits--five admitted without objection; one admitted over objection--and no witnesses; the Applicant presented no exhibits and the testimony of one witness, himself. I received the transcript on 21 November 1996.

A copy of the SOR is attached to this Determination and incorporated by reference.

RULINGS ON PROCEDURE

In reviewing the documentary evidence after the close of the record, I came across a name in one of Applicant's sworn statements that seemed familiar to me. At the time, I did not recall why the name was familiar to me. Upon my return to the office, I reviewed my personal records; those records reveal that as Department Counsel for DOHA in November 1994, I reviewed a Statement of Reasons (SOR) on the named individual. I have no independent recollection of what the SOR contained; based on Applicant's statement that he used drugs in ----- with this individual, I surmise that the case involved at least drug abuse. My records also reveal that in January 1995, I prepared a File of Relevant Material

(FORM) on this individual for forwarding to an Administrative Judge for an administrative decision. I have no recollection of the particulars of that FORM. The only information I recall about the individual is what is contained in Applicant's sworn statement. I have no recollection from the other individual's case that Applicant was mentioned in those records, by name or otherwise. I was, of course, not involved in the issuance of the SOR or the presentation of the evidence in the Applicant's case.

By order dated 19 November 1996, I disclosed this information to Applicant and Department Counsel as well as my belief that I do not believe there is anything in my earlier participation as a Department Counsel in the other case which would affect my impartiality in deciding this case. However, I gave both parties until 29 November 1996 to voice any objection they might have to my continuing to sit on this case. On 25 November 1996, Department Counsel indicated no objection to my deciding the case; as of the date of this decision, Applicant had not responded. I conclude he has waived any objection to my deciding this case.

FINDINGS OF FACT

Applicant admitted and denied the original allegations of the SOR in such a way that the answers contradicted themselves; I concluded that Applicant essentially denied the allegations. Accordingly, I did not incorporate any admissions as findings of fact.

Applicant is a 32-year old employee of a defense contractor seeking to retain a secret clearance.

On 24 March 1992, Applicant falsified a National Agency Questionnaire (NAQ)(DD Form 398-2)(G.E.1) when he answered "no" to a question designed to elicit his drug purchase history; further, while he admitted using drugs, he falsely asserted that he had used only marijuana, and only during high school from approximately 1979 to 1982; in fact, Applicant had used cocaine in 1987 or 1988, and had used and purchased marijuana more frequently and recently (into March 1992) than he had claimed. On 27 January 1995, Applicant more fully disclosed his drug abuse (G.E. 3): (2) he had begun using marijuana in 1981 or 1982, using it--and sharing the cost--approximately every weekend with friends. From November 1982 to approximately 1984, Applicant used marijuana an average of 5-6 times a month. Between 1984 and 1988--during which time Applicant was in technical school--he did not use marijuana. He resumed using marijuana in 1988, using it an average of twice monthly until approximately September 1994. Sometime in 1987 or 1988, he used a marijuana cigarette laced with cocaine. During the time he used marijuana he contributed to its purchase, either by buying it directly himself or contributing to a group purchase. He last purchased marijuana in September 1994. He does not intend to use marijuana in the future.

On 27 March 1996, Applicant falsified a Security Clearance Application (SF 86)(G.E. 2) by failing to disclose his arrest and conviction for shoplifting in May 1992, failing to disclose his purchases of marijuana over the years, and understating his marijuana use. At the hearing (Tr. 36), Applicant admitted falsifying his NAQ for fear he would not get his security clearance; he later also admitted (Tr. 47) falsifying his drug purchases.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

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 include:

(2) 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, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

(3) deliberately providing false or misleading information concerning relevant and material matters to an investigator, . . . in connection with a personnel security or trustworthiness determination;

Conditions that could mitigate security concerns include:

None.

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.

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

(1) any drug abuse;

(2) illegal drug possession, including . . . purchase . . .

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.

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.

Burden of Proof

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of

denials."

CONCLUSIONS

The Government has established its case under Criteria E. The information sought by the Government on the NAQ and SF 86 was relevant and material to the Government's investigations of the Applicant's fitness for access to classified information, and the Applicant knowingly and wilfully falsified that information. Each time, Applicant disclosed only so much of his drug history as he thought would get by the DIS. While the Applicant apparently disclosed his drug abuse history in January 1995, he did so only when the DIS contacted him about recent allegations that he had used drugs. At no time did Applicant make any effort to fully disclose his drug abuse history, much less a prompt, good faith effort before the DIS contacted him. Furthermore, even after that disclosure, he falsified another security clearance application. He knew the answers he provided were false; and indeed he knew the answers had to be false for him to get what he wanted--a security clearance. The Applicant's failure to fully disclose his drug abuse history until he was confronted by the DIS suggests that he cannot be relied upon to speak the truth if the truth presents possible adverse consequences for his own interests I find criterion E. against the Applicant.

The Government has established its case under Criterion H; however, I find the conduct mitigated. While Applicant's history of drug abuse raises serious doubts about his fitness for access to classified information, there is no evidence of drug use after September 1994, over two years ago. Applicant's drug abuse was never especially extensive; I accept his claims that he now realizes that drug use is incompatible with access to classified information and will not use drugs in the future. I find criterion H. for Applicant.

The Government has established its case under Criteria J. The Applicant's knowing, multiple falsifications to an agency of the federal government on matters within that agency's jurisdiction clearly violate 18 U.S.C. §1001. The falsifications had the potential to influence the course of the background investigation--in areas of legitimate concern to the Government, and at least in 1992 apparently did mislead the Government into granting a clearance even though Applicant continued to use drugs. I find criterion J. against the Applicant.

FORMAL FINDINGS

Paragraph 1. Criterion E: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Paragraph 2. Criterion H: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

Subparagraph f: For the Applicant

Paragraph 3. Criterion J: AGAINST THE APPLICANT

Subparagraph 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.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996 (Directive).
2. Allegations of more recent drug abuse by Applicant had surfaced in a background investigation of a co-worker.