

DATE: June 6, 1997

In RE:

SSN: -----

Applicant for security clearance

ISCR OSD Case No. 96-0429

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

Appearances

FOR THE GOVERNMENT

Claude R. Heiny, III, Esq.

Department Counsel

FOR THE APPLICANT

Pro se

STATEMENT OF CASE

On June 19, 1996, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, and amended by Change 3 on February 13, 1996, 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 clearance should be denied or revoked. The SOR is attached. Applicant filed his Answer to the SOR on July 9, 1996.

Applicant elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the File of Relevant Material (FORM) on October 8, 1996. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received a copy on October 21, 1996. Applicant's reply was due by November 21, 1996. No reply was received. The case was received by the undersigned for resolution on April 22, 1997.

FINDINGS OF FACT

The Following Findings of Fact are based on the documentation and testimony. The SOR alleges drug involvement (Criterion H), personal conduct (Criterion E), and criminal conduct (Criterion J). Applicant denied subparagraph 1a because he never used prescribed pain killers to get high. If he misused prescribed pain medications, it was to medicate the pain. [\(1\)](#) The last time he abused prescribed medication was in February 1995. Applicant purchased and used methamphetamines sporadically from 1992 to 1994. He used cocaine and marijuana once. He admitted he was given mushrooms on one occasion.

Applicant is 24 years old and employed as a ----- for a defense contractor. He seeks a secret level clearance.

On May 24, 1995, Applicant did not provide truthful information to questions 20a of his National Agency Questionnaire (NAQ, DD Form 398-2) when he indicated "no" to the question whether he had never used any drug or narcotic. He untruthfully indicated "no" in response to question 20b, asking whether he had never been involved in the illegal purchase of drugs. He untruthfully indicated "no" in response to question 20c, asking whether he had never misused or abused a drug prescribed by a physician.

On June 21, 1995, Applicant untruthfully answered "no" to question 23, asking whether he had ever used any drugs. Also, he incorrectly answered "no" to whether he had ever purchased any drug. Finally, he furnished false information to question 25 when he answered "no" to the question of whether he had ever misused or abused a drug prescribed by a physician.

Applicant provided false information in a signed sworn statement to an Agent from the Defense Investigative Service (DIS) on November 27, 1995, when he indicated he used methamphetamines only one time in 1992, and never used cocaine or marijuana, and never purchased any drug.

In his Answer, Applicant provided several explanations for supplying false information on his security form and in his sworn statement. First, he did not disclose his drug history because he made a personal commitment to leave his drug use in the past. Second, he did not reveal his drug history because the information would have barred his employment. Third, if he had come forward with the adverse drug information, he would have been fired.

Intake medical records, dated November 1, 1994, provide a different picture of Applicant's drug history. According to handwritten notes taken during an initial interview, Applicant was using marijuana extensively, binging on alcohol, and using cocaine about three times a month. He was also using crystal methamphetamine.

Applicant complained about the DIS investigation because his treating doctor was not clearly told why he (the doctor) was being interviewed. Applicant also claimed that the information obtained from his doctor exceeded the information sought by the three questions in the release.⁽²⁾

Mr. A, by character letter, explained that Applicant was hired as a ----- and was promoted to a -----, Applicant is hardworking and enthusiastic. Dr. B, Applicant's treating doctor, identified Applicant's medical condition and recommended Applicant's drug use and his omission of his drug history should be excused because he came forward with the truth. Applicant's performance was rated as acceptable for the period ending October 17, 1995.

POLICIES

Enclosure 2 of the Directive sets forth policy factors which must be given binding consideration in making security clearance determinations. These factors must be considered in every case according to the pertinent criterion; however, the factors are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the entire realm of human experience or that the factors apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Factors most pertinent to evaluation of the facts in this case are:

Drug Involvement (Criterion H)

Factors Against Clearance:

1. any drug abuse.
2. illegal drug purchase

Factors for Clearance:

1. the drug involvement was not recent.
3. a demonstrated intent not to use any drugs in the future.

Personal Conduct (Criterion E)

Factors Against Clearance:

2. the deliberate omission of relevant and material facts from any personnel security questionnaire...to conduct investigations...determine security clearance eligibility or trustworthiness
3. deliberately providing false information concerning relevant and material matters to an investigator...in connection with a personnel security or trustworthiness determination.

Factors for Clearance:

None.

Criminal Conduct (Criterion J)

Factors Against Clearance:

1. any criminal conduct, regardless of whether the person was formally charged.

Factors for Clearance:

None.

General Policy Factors (Whole Person Concept)

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at page 2-1 of Enclosure 2 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 behavioral changes; (7) the motivation for the conduct; and, (8) the likelihood of continuation or recurrence.

Burden of Proof

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information 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.

The Government must establish all the factual allegations under Criterion H (drug involvement), Criterion E (personal conduct), and Criterion J (criminal conduct) which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection or nexus must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, objective or direct evidence is not required.

Then, the applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation which demonstrates that the past adverse conduct is unlikely to repeat itself and Applicant presently qualifies for a security clearance.

CONCLUSIONS

Applicant's use of drugs establishes all the elements of Criterion H. According to the policy factors, any kind of drug use raises security concerns. In addition, purchasing drugs increases those security concerns. Applicant purchased and used methamphetamines infrequently between 1992 and 1994. Even though there is some contradictory evidence suggesting Applicant's cocaine and marijuana use may have been more than one-time events, the discrepant evidence is too vague in description to draw conclusive inferences about the extent of Applicant's marijuana or cocaine use. With no evidence of drug use after 1994, and Applicant's persuasive statements concerning his future intentions to stay drug-free, Criterion H is found in Applicant's favor.

Criterion E applies to falsifications of security forms, sworn statements or other dishonest conduct discovered during the course of a security investigation. The security form requests favorable and unfavorable information to enable the Government to make an informed decision about the qualifications of a security clearance applicant. The applicant has an important opportunity to confront an adverse or embarrassing past by truthfully revealing all negative information to enable the Government to make an informed decision on security suitability. When the applicant chooses to repeatedly lie rather than tell the truth about his past, he is telling the Government he cannot be counted on to tell the truth where the truth conflicts with his own selfish objectives.

Applicant's three intentional falsifications on May 24, 1995, June 21, 1995, and November 27, 1995, establish personal conduct which raises clear doubts about Applicant's judgment, trustworthiness, and reliability. Falsifying information because of a personal commitment to leave drug use in the past does not excuse the falsification because the security form questions are not conditional. In short, the questions do not allow certain applicant's to lie just because they have made a personal commitment to leave their drug use in the past. Rather, the questions are expressed in unconditional terms and the applicant must disclose any drug use or purchase.

Applicant was also concerned that if he told the truth on the form, he would hamper his chances of getting the job. Applicant's concern about landing the job does not excuse the false information he placed on both security forms. Applicant's subsequent reluctance about coming forward for fear of being fired does not mitigate Applicant's intentional falsifications in the first instance. Applicant knew his "no" answers were false and decided on three separate occasions to conceal rather than reveal the truth to protect his chances of obtaining and keeping the job. His intentional choice to provide false information raises distinct doubts about his security suitability.

Applicant's intentional falsification a third time in November 1995 constitutes proscribed conduct under Criterion E for deliberately providing false information about relevant and material matters in connection with a security clearance investigation. The fact that Applicant changed his story by admitting some drug use in 1992 is just as dishonest as his earlier claim in May and June 1995 of having never used drugs at any time in his life. On each occasion, he told less than the truth about his drug use.

The mitigating factors under Criterion E have been considered but are inapplicable. Applicant's drug history is clearly pertinent to his judgment, trustworthiness and reliability. Applicant did not provide the complete picture about his drug use until confronted with information from another source indicating more use of a variety of drugs.

Applicant's falsification of his security forms and sworn statement represents a pattern of conduct in violation of 18 USC 1001. Title 18 applies to intentional falsifications of material information. Applicant intentionally falsified material information when he deliberately supplied less than the complete picture regarding his drug history. The Government had a right to know about Applicant's past history of drug abuse in order to make an informed decision about his security suitability.

The positive opinions of the Mr. A about Applicant's job performance and Dr. B about deserving another chance, constitute favorable evidence. Applicant's performance evaluation shows Applicant is certainly capable of handling the job responsibilities of a computer programmer. Weighing against the positive evidence is the evidence of three intentional falsifications of material information in May, June and November 1995. In sum, Applicant has not met his ultimate burden of persuasion under Criterion E and Criterion J.

FORMAL FINDINGS

After reviewing the specific policy factors and general policy factors (whole person concept) set forth in POLICIES above, Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (drug involvement): FOR THE APPLICANT.

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.
- f. For the Applicant.

Paragraph 2 (personal conduct): AGAINST THE APPLICANT.

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.

Paragraph 3 (criminal conduct): AGAINST THE APPLICANT.

- a. Against the Applicant.

Factual support and reasons for the foregoing findings are set forth in FINDINGS OF FACT and CONCLUSIONS above.

DECISION

In light of all the circumstances of the 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.

Paul J. Mason

Administrative Judge

1. In his sworn statement of March 5, 1996, Applicant unequivocally admitted he misused pain killers.
2. Attached to Items 4 and 5 are releases which Applicant signed on May 24 and June 21, 1995, authorizing the release of information from listed sources, including doctors and hospitals.