

DATE: January 17, 1997

In Re:

SSN: -----

Applicant for security clearance

ISCR OSD Case No. 96-0465

DETERMINATION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

Appearances

FOR THE GOVERNMENT

Claude R. Heiny, II

Department Counsel

FOR THE APPLICANT

Pro se

STATEMENT OF CASE

On July 8, 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, 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 30, 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 on September 19, 1996. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the copy on September 30, 1996. Applicant's reply was due on October 30, 1996. No reply was received. The case was received by the undersigned for resolution on November 12, 1996.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR and the File of Relevant Material. The SOR alleges adverse conduct under Criterion E. ⁽¹⁾ Applicant deliberately falsified the November 18, 1988 security form when he answered 'no' to question 15 requesting information concerning a petition for bankruptcy or financial difficulties. ⁽²⁾ Applicant deliberately falsified the August 3, 1994 security form when he answered 'no' to question 19c and 19e concerning failure to pay taxes and delinquent debts. ⁽³⁾ On December 1, 1994, Applicant falsified his security form when he responded 'no' to questions 20c and 20e relating to liens and delinquent debts. ⁽⁴⁾

Applicant deliberately falsified the security forms of November 8, 1988, August 3, 1994, and December 1, 1994, when

he denied he had ever used, purchased or possessed drugs.⁽⁵⁾ On July 6, 1995, Applicant deliberately falsified his sworn statement when he said, " I have never smoked marijuana or any other illegal drugs nor have I ever been in possession of marijuana or any other illegal drugs."

Applicant continued to use marijuana on a daily basis even after he received his security clearance in May 1989.

POLICIES

Enclosure 2 of the Directive set forth specific policy factors and general policy factors under the whole person concept 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:

Personal Conduct

Factors Against Clearance:

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

Factors for Clearance:

None.

General Policy Factors

Under the whole person concept, all available information about the person's past and present should be considered in reaching a decision, regardless of whether the information is favorable and unfavorable. The nature and circumstances of the conduct, the person's age and maturity at the time of the conduct, the motivation for the conduct, and the likelihood for recurrence of the conduct in the future, are essential factors to consider in reaching a decision concerning the person's security qualifications.

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 E (personal 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, with respect to the sufficiency of proof of a rational connection, objective or direct evidence is not required. Then, the applicant must present persuasive evidence in extenuation or mitigation which overcomes the Government's case and demonstrates

applicant's suitability for access to classified information.

CONCLUSIONS

Criterion E (personal conduct) addresses behavior that raises significant doubt about a person's judgment, trustworthiness and reliability. Applicant's falsification of his security forms of November 1988, August 1994, and December 1994, and his sworn statement of July 6, 1995, represents a pattern of intentionally dishonest conduct that demonstrates poor judgment, unreliability and untrustworthiness. The information Applicant chose to repeatedly conceal from the Government over a seven year period constitutes clearly relevant and material information the Government has a legitimate purpose to inquire about in order to make an informed decision regarding Applicant's qualifications to hold a security clearance.

The record raises a reasonable inference Applicant would have never told the Government about his financial problems had the Government not developed the adverse financial information through credit investigations into Applicant's financial background.⁽⁶⁾ There is no evidence that even suggests Applicant's omissions of material information were caused by inadequate or improper advice. Nor is there any evidence of positive steps to eliminate or reduce the indebtedness in a voluntary manner.

Applicant's explanations or rationalizations for his indebtedness do not mitigate either his intentional falsifications of the security forms or his sworn statement. The fact he finally admitted his use of drugs in September 1995 does not excuse his earlier falsifications in 1988, 1994, and July 1995.

Considering (1) Applicant's repeated falsifications from November 1988 to July 1995 of material information about his financial problems and his drug purchase and use, (2) his continued drug use after receiving a clearance in May 1989, and (3) his present adamant attitude indicating a refusal to repay, Applicant has failed to meet his ultimate burden of showing he warrants access to classified information.

FORMAL FINDINGS

Formal Findings required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1a: AGAINST THE APPLICANT.

- (1). Against the Applicant.
- (2). Against the Applicant.
- (3). Against the Applicant.
- (4). Against the Applicant.
- (5). Against the Applicant.
- (6). Against the Applicant.
- (7). Against the Applicant.

Paragraph 1b: AGAINST THE APPLICANT.

- (1). Against the Applicant.
- (2). Against the Applicant.
- (3). Against the Applicant.
- (4). Against the Applicant.

(5). Against the Applicant.

(6). Against the Applicant.

(7). Against the Applicant.

(8). Against the Applicant.

Paragraph 1c: AGAINST THE APPLICANT.

(1). Against the Applicant.

(2). Against the Applicant.

(3). Against the Applicant.

(4). Against the Applicant.

(5). Against the Applicant.

(6). Against the Applicant.

(7). Against the Applicant.

Paragraph 1d: AGAINST THE APPLICANT.

(1). Against the Applicant.

(2). Against the Applicant.

(3). Against the Applicant.

Paragraph 1e: AGAINST THE APPLICANT.

(1). Against the Applicant.

(2). Against the Applicant.

(3). Against the Applicant.

(4). Against the Applicant.

Paragraph 1f: AGAINST THE APPLICANT.

Paragraph 1g: AGAINST THE APPLICANT.

Paragraph 1h: AGAINST THE APPLICANT.

Factual support for the foregoing findings are found in FINDINGS OF FACT and CONCLUSIONS above.

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.

Paul J. Mason

Administrative Judge

1. The specific adverse conduct involved is deliberate omission of relevant or material facts or information from a security form or from an investigator in connection with a personnel security or trustworthiness investigation. See, Directive, Enclosure 2, p. 2-11.
2. Applicant's claim he misunderstood the word 'ever' is not credible considering the extent of debt (approximately \$9000) he confronted when he submitted the security form in November 1988. In addition, Applicant has repeatedly indicated he does not intend to satisfy any of the debts identified under subparagraph 1a and those additional debts identified under subparagraphs 1b and 1c..
3. Applicant's claim he contacted the Internal Revenue Service (IRS) is not credible because he has presented no evidence in support. Furthermore, his attempt to shift the blame to uncompromising creditors is simply not persuasive.
4. The variety of explanations advanced by Applicant for his intentional falsifications of the 3 security forms is not credible.
5. Applicant's ultimate admission to drug use, purchase, cultivation and possession of marijuana and amphetamines (Subparagraphs 1d and 1e) in his sworn statement of September 20, 1995, does not eliminate the deliberate falsification of drug use on the security forms of November 1988, August 1994 and December 1994.
6. Even when he was finally confronted with and finally acknowledging his financial indebtedness, Applicant has repeatedly exhibited a defiant indifference to resolving his indebtedness.