

DATE: December 31, 1996

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 96-0563

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN G. METZ, JR.**

**APPEARANCES**

**FOR THE GOVERNMENT**

Matthew E. Malone, Esquire

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<sup>(1)</sup> that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. By undated response, Applicant answered the SOR and requested an administrative decision on the record. Applicant did not respond to the Government's File of Relevant Material (FORM)--issued 8 October 1996; the record in this case closed 15 November 1996, the day the response was due at DOHA. I received the case on 12 December 1996 to determine whether clearance should be granted, continued, denied or revoked.

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

**FINDINGS OF FACT**

Applicant admitted the allegations of the SOR; accordingly, I incorporate the admissions as findings of fact.

Applicant is a 23-year old employee of a defense contractor seeking a secret clearance.

On 22 March 1995, Applicant falsified a National Agency Questionnaire (NAQ)(DD Form 398-2)(FORM, Item 4) when he understated the full extent of his drug use, purchases, and sales. He repeated these falsifications on a 23 October 1995 National Agency Questionnaire (NAQ)(DD Form 398-2)(FORM, Item 5). During a subject interview with the Defense Investigative Service (DIS) on 1 February 1996, Applicant falsely asserted he had only used marijuana between January 1993 and May 1994. In a 21 March 1996 sworn statement to the DIS (Item 7), Applicant admitted he

had used marijuana after May 1994, but falsely asserted he had not used marijuana after Summer 1995. Two days later (Item 8), he contacted the DIS to disclose that he had recalled using marijuana once more in September 1995, but falsely asserted that he had not used any drugs since that later date.<sup>(2)</sup> Finally, Applicant again falsified a 7 June 1996 National Agency Questionnaire (NAQ)(DD Form 398-2)(FORM, Item 6) when he understated the full extent of his drug use, asserting that it occurred between 1991 and May 1994. Not until Applicant was confronted with a final DIS interview on 9 July 1996 (Item 9), did he disclose the true extent of his drug abuse: Applicant first used marijuana in 1989 or 1990 while in high school, using it once a month. During college (approximately 1991) to his drug arrest in April 1994, Applicant used marijuana approximately twice a week. From his April 1994 drug arrest to college graduation (not otherwise specified), Applicant claimed he used no drugs. From graduation to July 1996, Applicant used marijuana once a month, with the last use on 5 July 1996, some four days before his last DIS interview.

Applicant used hallucinogenic mushrooms three times between 1992/1993 and April 1994; he used LSD three or four times between summer 1991 and early 1992. He purchased the drugs he used in high school and college; the largest single buy was \$20.00, the aggregate spent on drugs \$200.00. Applicant engaged in accommodation sales of drugs between early 1993 and April 1994, netting approximately \$50.00. The drug sales ended when Applicant was arrested on 5 April 1994 for trafficking mushrooms--he later pleaded to furnishing a controlled substance.

Applicant asserted that he failed to disclose his more extensive drug use to the other DIS agents "because I felt it was insignificant when compared with other parts of my past." (Item 9).

### **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:

#### **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, sale . . .

Conditions that could mitigate security concerns include:

None.

#### **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.

### **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 Criterion H. Applicant's extensive history of drug abuse raises serious doubts about his fitness for access to classified information. His use, purchase and sale of LSD and mushrooms is sufficiently remote to suggest that he will not use these drugs in the future. However, his use of marijuana presents a different question. Applicant's use of marijuana is more extensive than his use of other drugs, and more recent. While the Applicant stated an intent to not use drugs in the future, he had made similar statements on his NAQs and prior sworn statements yet continued to use marijuana until July 1996--at a time he knew that DoD was concerned about his fitness for access to classified information because of that drug abuse. On these facts, I conclude that it is too early to determine that Applicant's drug abuse is completely behind him. I find Criterion H. against Applicant.

The Government has established its case under Criteria E. The information sought by the Government on the NAQs and during the subject interviews was relevant and material to the Government's investigation 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. The Applicant's failure to fully disclose his drug abuse history until he was confronted with a follow up interview, suggests that he cannot be relied upon to speak the truth if the truth presents possible adverse consequences for his own interests. Although Applicant claims that he omitted the later drug because of its relative insignificance, I reject that explanation. 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. At no time did Applicant make any effort to fully disclose his drug abuse history, much less a prompt, good faith effort. (3) I find criterion E. against the Applicant.

The Government has established its case under Criterion 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. However, I find that Applicant is unlikely to engage in drug sales in the future; Applicant's sale activity was minimal, and has not recurred since April 1994. I find criterion J. against the Applicant.

### **FORMAL FINDINGS**

#### Paragraph 1. Criterion H: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

Subparagraph f: For the Applicant

Subparagraph g: For the Applicant

Subparagraph h: For the Applicant

Subparagraph i: For the Applicant

#### Paragraph 2. 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 3. Criterion J: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: For 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. This falsification was not alleged in the SOR, and I have not considered it on the merits of the case; however, I have considered it on the issue of Applicant's general credibility.
3. Notwithstanding that he contacted DIS on 23 March 1996 to disclose drug use in September 1995; he falsely asserted that September 1995 was the last drug use, when his use of drugs continued into 1996.