

DATE: January 14, 1997

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 96-0578

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 16 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. On 10 September 1993, Applicant answered the SOR and requested a hearing. DOHA assigned the case to me on 9 October 1996; I received it on 15 October 1996. I set the case on 24 October 1996, and issued a notice of hearing on 5 November 1996 for a hearing on 18 November 1996.

At the hearing, the Government presented eleven exhibits--admitted without objection--and one witness; Applicant presented two exhibits--one admitted over objection--and the testimony of one witness, himself. I received the transcript on 2 December 1996.

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

RULINGS ON PROCEDURE

At the hearing, Department Counsel moved to amend the SOR by deleting subparagraph 2. a.(5) and by amending subparagraph 2.c.(2) to read December 1995 vice December 1985. Applicant did not object to either amendment and I granted the motion.

FINDINGS OF FACT

Applicant admitted the original allegations of the SOR, except for the allegations of paragraph 1.e.--that he will continue to use marijuana--and paragraph 2.a.--alleging falsification of his arrest record; accordingly, I incorporate the

admissions as findings of fact.

Applicant is a 28-year old employee of a defense contractor seeking a secret clearance.

On 24 April 1995, Applicant falsified a National Agency Questionnaire (NAQ)(DD Form 398-2)(G.E.1) when he answered "no" to questions designed to elicit his drug history; further, he falsified the NAQ by disclosing only a portion of his arrest record.⁽²⁾ On 13 December 1995, Applicant executed a sworn statement that falsely claimed that he had used marijuana only while in high school and that his use of marijuana had stopped in May or June 1986 (G.E. 2). Not until confronted with the prospect of a polygraph examination on 22 May 1996 did Applicant disclose the full extent of his drug abuse (G.E. 7): Applicant first used marijuana in late 1982, when he was fourteen. From 1982 to late 1992, he used marijuana several times a week, including while on duty with his employer at the time. From late 1992 to October 1995, Applicant would go through binges where he would use daily for 3-4 weeks every eight months. From October 1995 to May 1996, Applicant used marijuana several times a week--including the day before his polygraph examination on 22 May 1996. Since May 1996 he has used marijuana once, in approximately August 1996. Applicant may use marijuana in the future (Tr. 57; G.E. 7).

In addition to his marijuana use, Applicant also bought marijuana from 1982 to 1996; he sold marijuana for profit in 1988-1989, netting approximately \$800.00. Applicant used cocaine--including crack cocaine--5-10 times from 1986 to 1994; he bought cocaine during the same period, and sold cocaine once in 1990 or 1991, netting \$100.00. Between 1983 and 1991, he used a variety of drugs at various times: Valium--not prescribed for him (1993), LSD--including purchases (1983-1991), hallucinogenic mushrooms (1986-1991), speed (1986), percodan--not prescribed for him (1986), opium (1986), hashish--including purchases (1985).

Applicant also has an extensive history of criminal activity: he was arrested on 28 November 1986 for assault; on 16 March 1990, he was arrested for obstructing police business; he was expelled from high school in 1984 for suspicion of theft; in 1988, he stole \$300.00 in ----- while employed at a ----- store; from 1987 to 1993, he stole equipment from another employer and resold it for profit; from April 1993 to March 1995, he stole chemicals from yet another employer and used them in side jobs--netting approximately \$3,000.00.

Based on his performance appraisals, Applicant is a slightly-above-average employee (A.E. A). Several co-workers and supervisors praise his work performance, honesty, and integrity, but none appears aware of the issues raised in the SOR (A.E. B).

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:

(1) the drug involvement was not recent.

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;

(2) a single serious crime or multiple lesser offenses.

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 involvement with Valium, percodan, LSD,

hallucinogenic mushrooms, amphetamines, opium, and hashish--and his attempted cultivation of marijuana--was sufficiently infrequent and remote to suggest that Applicant will not use these drugs in the future. However, his involvement with marijuana and cocaine presents a different question. Applicant's use of marijuana is more extensive than his use of other drugs, and more recent. Indeed, I conclude that Applicant is likely to continue to use marijuana, based both on the fact that he has continued to use the drug and his statements that he may use it in the future. Marijuana is clearly Applicant's drug of choice and he sees no legal or other impediment to continued use. His cocaine use, while less frequent than his marijuana use, is too recent to conclude that he has put that abuse behind him. Applicant's sales of marijuana and cocaine resulted in small profit to Applicant. While he does not appear to have dealt with large amounts of these drugs, I find nothing in the record to lead me to conclude that Applicant would refrain from drug sales if the opportunity presented itself in the future. On the record before me, I conclude that Applicant had not ceased his abuse of marijuana and is likely to continue to use it in the future. Accordingly, I find Criterion H. against Applicant.

The Government has established its case under Criteria E. The information sought by the Government on the NAQ and during the subject interview 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 polygraph examination, 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 was advised to falsify his answers, the record reflects that he did not rely on that advice--knowing it to be wrong--but falsified the answers to protect his own interests. 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. I find criterion E. against the 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. Applicant's other criminal activity also warrants denial of his clearance. While his two major arrests were caused in part by his alcohol consumption, they are a part of a larger pattern of criminal activity. As far back as 1984, Applicant was expelled from school for theft. That dishonest and criminal conduct has continued between 1988 and March 1995 as Applicant has stolen from three different employers--to each of whom Applicant had a fiduciary duty. I find nothing in the record to suggest that Applicant would not steal from his present employer if the opportunity arose--or that Applicant would not make similar misuse of classified information if access to such information were granted. 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: Against the Applicant

Subparagraph d: For the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: For the Applicant

Subparagraph i: For the Applicant

Subparagraph j: For the Applicant

Subparagraph k: For the Applicant

Subparagraph l: For the Applicant

Subparagraph m: For the Applicant

Subparagraph n: For the Applicant

Subparagraph o For the Applicant

Subparagraph p For the Applicant

Subparagraph q: 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

Paragraph 3. Criterion J: 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

Subparagraph f: Against the Applicant

Subparagraph g: 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. Applicant admitted falsifying his drug history to get his clearance and keep his job (G.E. 2; Tr. 48). While he claimed that a co-worker advised him to not list his drug history, Applicant knew that was wrong. Applicant claimed that he forgot the unlisted arrests, but I do not accept that explanation. There were too many omitted incidents, several of which

were much more recent than the listed arrests. Whether he could recall the precise details of the omitted arrests or not, I conclude that at the time he completed the NAQ, he knew his arrest record was more extensive than he had disclosed, and that he deliberately failed to disclose that more extensive history.