

DATE: March 31, 1997

In Re:

SSN: -----

Applicant for security clearance

DOHA Case No. 96-0582

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

Appearances

FOR THE GOVERNMENT

William S. Fields, Esq.

Department Counsel

FOR THE APPLICANT

Pro se

STATEMENT OF CASE

On August 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, 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 October 14, 1996.

The case was received by the undersigned on December 23, 1996. A notice of hearing was issued on January 6, 1997, and the case was heard on January 28, 1997. The Government submitted documentary evidence. The Government called two witnesses. Testimony was taken from the Applicant. The transcript was received on February 10, 1997.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The SOR alleges illegal drug involvement (Criterion H), personal conduct (Criterion E), and criminal conduct (Criterion J). Applicant admitted all allegations under paragraph 1, and denied all allegations under paragraph 2 and 3.

Applicant used cocaine and crack cocaine with varying frequency from 1988 to at least November 1995. According to GE #3, he was using cocaine twice a week from 1988 to 1992. In 1992, Applicant switched to crack and was quickly addicted⁽¹⁾ when his crack use grew from weekly to daily. He began to miss work and lose sleep. Applicant's crack use did not abate until he entered treatment on March 8, 1993. (GE #6). Some time after his discharge in April 1993,

Applicant supplanted crack with alcohol. However, the alcohol brought back the desire for crack and Applicant found himself using crack again.⁽²⁾ Applicant also tried to sell cocaine in 1992 and 1993 but wound up using the drug. (GE #3).

Applicant received inpatient treatment from March 8, 1993 to March 25, 1993 for cocaine and marijuana abuse. He voluntarily entered treatment because he could not stop using cocaine. He completed the inpatient portion of treatment and was discharged with a fair prognosis conditioned upon his participation in Alcoholics Anonymous (AA) and group aftercare.⁽³⁾

According to GE #3, Applicant began using and purchasing marijuana in 1975 and stopped using and purchasing the drug in the Spring of 1993. From 1975 to 1978, he used the drug once a week or once every two weeks. From 1978 to 1981, he used the drug four times a month, and from 1991 to early 1993, he used marijuana twice a month. In the early 80's, he sold small amounts of marijuana to help pay for the amount he smoked.

Applicant used and purchased acid about six times between 1970 and the early 1980s, and he also abused prescribed medication from 1992 to 1995. (GE #3).

Applicant falsified question 20a on his national agency questionnaire on December 9, 1994 by indicating he used marijuana from 1992 to 1993, and cocaine from 1993 and 1994. He also falsified question 20b on the questionnaire when he stated he purchased drugs for his own use. In response to question 20c on the same questionnaire, he falsely denied abuse of prescription drugs.⁽⁴⁾

On August 30, 1995, Applicant falsely understated his cocaine and marijuana use, and completely denied ever selling any drugs, using other drugs, or abusing prescription drugs.⁽⁵⁾ On February 13, 1996, Applicant falsely stated a second time his last use of cocaine was in the Spring of 1993. (GE #5).

Applicant believes his problems began when he separated from his first wife in early 1993. (Tr. 35). Approximately the same time as the separation, and partially attributed to the crack abuse, Applicant found himself gazing at the walls in his house for long periods of time. (Tr. 36).⁽⁶⁾ Applicant also has had ongoing problems with his girlfriend who, like Applicant, has had difficulty quitting cocaine. (Tr. 36, 48-49).

Applicant's life changed dramatically in November 1995. He was trapped in a house fire caused by his girlfriend (Tr. 43) and his burn injuries required he stay in the hospital for some time. When Applicant was discharged, his brother, a dentist and minister, transported Applicant to the southern part of the state and took control of his life for three and one-half months. His brother showed Applicant a wholesome religious way of life which Applicant appreciated. (Tr. 43). Since returning to the area, Applicant has reduced his drinking substantially while learning how to enjoy life much better. He feels blessed to have three wonderful children. (Tr. 47).

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:

Criterion H (drug involvement)

Factors Against Clearance:

1. Any drug abuse.

2. illegal drug possession, including...purchase, sale....

3. failure to successfully complete a drug treatment program prescribed by a credentialed medical professional.

Factors for Clearance:

None.

Criterion E (personal conduct)

Factors Against Clearance:

2. the deliberate omission...falsification of relevant and material facts from any personnel security questionnaire...to...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.

Factors for Clearance:

None.

Criterion J (criminal conduct)

Factors Against Clearance:

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

2. a single serious crime or multiple lesser crimes.

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, with respect to the sufficiency of proof of a rational connection, 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 abuse of cocaine from 1988 to November 1995 falls within the scope of Criterion H. His use, purchase and sale of marijuana is mitigated by the lack of evidence indicating he had any contact with marijuana after the Spring of 1993. Likewise, there is no evidence of any use or purchase of LSD after the early 80's. Applicant's use of cocaine is more extensive and more recent. Although Applicant stated an intent not to use cocaine or drugs in the future, he made similar statements in December 1994, August 1995, and February 1996. Furthermore, Applicant intentionally falsified information about his drug history on three separate occasions.

Applicant's intentional falsifications on three separate occasions establish a case of willful omission of material information under Criterion E. The information sought by the Government in the questionnaire in December 1994 was relevant to the Government's legitimate inquiry of the Applicant's qualifications for receiving a security clearance. The information sought by the Government in the two sworn statements was relevant and material to the security investigation into whether Applicant should have a security clearance. Applicant's failure to disclose the complete history of his drug use on three separate occasions raises significant concerns about whether Applicant has the judgment necessary to abide by security regulations and rules at all times and in all places. If he is willing to lie about his drug use to protect his job or enhance his chances for a security clearance, then he may be willing to wilfully defy or ignore security regulations when they do not advance his own interests.

The falsifications were not isolated events but occurred on three separate occasions from December 1994 to April 1996, and were designed to mislead the Government about Applicant's drug history. Applicant made no efforts to correct the misinformation until confronted with his deception. There is no evidence of detrimental reliance by Applicant on anyone who supplied him with inadequate or improper advice.

Applicant's proscribed conduct under Criterion E also establishes criminal conduct under 18 USC 1001 because Applicant wilfully falsified a security form and 2 sworn statements. The information he wilfully omitted was material to the Government's investigation into his security worthiness.

The criminal conduct was not an isolated event and did not stop until Applicant finally decided in April 1996, after being confronted with additional drug abuse, to disclose the entire picture of his drug history.

Applicant's positive change of direction in approximately February 1996, influencing his reduction of alcohol and saving of money for his children, constitutes positive evidence in Applicant's favor. However, the metamorphosis between November 1995 and February 1996 fails to outweigh Applicant's serious cocaine abuse and wilfully dishonest and criminal conduct from December 1994 to April 1996.

FORMAL FINDINGS

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

Paragraph 1(drug involvement): AGAINST THE APPLICANT.

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

- d. For the Applicant.
- e. For the Applicant.
- f. For the Applicant.
- g. For the Applicant.
- h. For the Applicant.
- i. For the Applicant.
- j. For the Applicant.

Paragraph 2 (personal conduct): AGAINST THE APPLICANT.

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

Paragraph 3 (criminal conduct): AGAINST THE APPLICANT.

- a. Against the Applicant.

Factual support and reasons 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. defined as the compulsive use to the point of physical or psychological dependency.
2. GE #5 establishes unequivocally Applicant was using cocaine in June 1995 because the drug was found in his blood stream along with the base chemicals for the aspirin he overdosed on. Although Applicant had some difficulty quantifying the amount and frequency of cocaine and crack use after his discharge in 1993 and November 1995, his conversations with his counselor, his inability to account for how he occasionally spent his money, and his belief he continued to use cocaine until November 1995, warrant a finding he used cocaine or crack until November 1995. (GE #3).
3. The record is silent on whether Applicant attended any AA or group aftercare.
4. In GE #3, Applicant revealed he did not provide truthful information in the December 1994 questionnaire.
5. While Applicant conceded in GE #3 he provided false information in GE #1, #2, and #4, he testified his memory, like his eyesight, is not like it should be. I find his memory is defective because of his regular abuse of cocaine/crack at

addictive levels both before and after his discharge from treatment in April 1993.

6. Presently, Applicant still gazes at the walls.