

DATE: April 9, 1997

In RE:

SSN: -----

Applicant for security clearance

ISCR Case No. 96-0622

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

Appearances

FOR THE GOVERNMENT

Barry M. Sax, Esq.

Department Counsel

FOR THE APPLICANT

Pro se

STATEMENT OF CASE

On August 30, 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 3, 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 December 23, 1996. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 20 days of receipt. Applicant received a copy on January 14, 1997. Applicant's reply was received on February 14, 1997. The case was received by the undersigned for resolution on March 7, 1997.

FINDINGS OF FACT

The Following Findings of Fact are based on the documentation and testimony. The SOR alleges illegal drug involvement (Criterion H), excessive alcohol consumption (Criterion G), personal conduct (Criterion E), and criminal conduct (Criterion J). Applicant admitted all the factual allegations except for subparagraph 1o. ⁽¹⁾ Applicant's admissions shall be incorporated in the following Findings of Fact.

Applicant used marijuana at varying frequency from 1986 to June 1996. ⁽²⁾ According to Item #6, Applicant purchased

marijuana at various times between 1986 and 1989. Applicant used cocaine/crack at various times from 1989 to June 1996. (3) Applicant was denied employment in September 1992 for failing a drug test; he admitted he had been smoking cocaine. (Item #5). Applicant purchased cocaine/crack at varying frequency from September 1992 to May 1993. (4) (Item #5).

Applicant purchased and used LSD on an infrequent basis in 1988 and 1989. He used the drug one additional time in June 1996. (Item #5). He purchased and used the drug ecstasy on two occasions in 1988 and 1989, and used the drug Xanax on approximately eight occasions in 1992 and 1993. (Item #5).

Applicant used drugs after he indicated on November 17, 1995 (Item #3), and on February 26, 1996 (Item #6), and on April 10, 1996 (Item #5), and after treatment in November 1994 (Items #7 and #8), he would not use drugs in the future.

Applicant used alcohol excessively at times from 1985 to 1996. Applicant was detained in 1988 on a college campus for being under the influence of alcohol. The dean of the college referred Applicant for alcohol counseling. (Item #5). Applicant pled guilty to driving while under the influence of alcohol (DWI) in September 1988. In 1990 or 1991, Applicant drove a company vehicle after having consumed alcohol, and he was subsequently terminated by his employer. In ay 1992, Applicant was arrested for DWI, but the charges were dropped when the arresting officer determined Applicant had less than the required amount of alcohol in his blood to be considered under the influence of alcohol. Applicant received treatment for alcohol dependency between February and November 1994. Applicant continues to consume alcohol. (Item #2).

Applicant provided an incomplete history in response to question 20a (inquiring about his drug use) on his security form dated November 17, 1995. He also answered "no" to the drug purchase question (question 20b, Item #3) and also answered "no" to question 20c, requesting information about abuse of prescription drugs.

In a sworn statement provided to the Defense Investigative Service (DIS) on February 26, 1996, Applicant falsely claimed he had never used or abused prescribed medications, and that he had only used cocaine on one occasion in 1990, and that he had used no other drugs since 1990. (Item #4). In a sworn statement provided to DIS on April 4, 1996, Applicant intentionally understated his drug use by indicating he had only used cocaine two to four times monthly between 1992 and 1993, and that he had used crack cocaine once in 1992, and that he had not used drugs in 2 years.

Applicant reiterated in his February 1997 response to the FORM he stopped using drugs and is agitated because his claim has not been accepted. He noted other people (from his church) know he has stopped using drugs and they accept him for who he is. Applicant falsified the security forms and statements because he did not want an adjudication of his case. He is definitely remorseful for his falsifications but objects to the entire proceeding because he loves his country. Applicant is disgruntled his hard earned tax dollars are being used against him when the taxes could be used more wisely in other areas.

On February 13, 1997, the ----- manager praised Applicant's outstanding work as a team player since September 1995 as well as his 6 negative drug tests during the period.

Applicant received a certificate for successfully completing inpatient treatment in April 1994 for polysubstance and alcohol dependency. There is no evidence Applicant completed the outpatient requirements of individual or group therapy, Alcoholics Anonymous (AA) or some similar organization.

Applicant's overall credibility is undermined by his falsifications on three separate occasions between November 1995 and April 1996. Unfortunately, Applicant's falsifications reduce the believability of Applicant's repeated statements he will refrain from drug use in the future.

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 G (Excessive alcohol consumption)

Factors Against Clearance:

1. alcohol-related incidents away from work....
3. diagnosis by a credentialed medical professional of alcohol abuse or alcohol dependence.
5. consumption of alcohol, subsequent to a diagnosis or alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program.

Factors for Clearance:

None.

Criterion E (personal conduct)

Factors Against Clearance:

2. the deliberate omission...or falsification of relevant and material facts from any personnel security questionnaire...to conduct investigations...determine security clearance eligibility of 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.

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 (illegal drug involvement), Criterion G (excessive alcohol consumption), 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/crack, marijuana and LSD, establishes the Government's case of illegal drug involvement under Criterion H. However, Applicant's use and purchase of ecstasy and abuse of prescription drugs are sufficiently mitigated by the passage of time and the sporadic use of these drugs. Applicant's use of LSD would have been mitigated by the passage of more than five years had he not used the drug recently in June 1996. Therefore, LSD, although he used the drug only once in June 1996, remains a concern, along with Applicant's regular periods of marijuana use since 1986 and regular periods of cocaine/crack use since 1989. Furthermore, Applicant's present assurances in February 1997 to abstain in the future are not very persuasive because he made similar statements in November 1995 on his security form. He also made similar statements in February and April 1996 while he was still using drugs. Applicant's repeated falsifications about future drug use cast legitimate concerns about whether Applicant's past drug use is unequivocally behind him.

Applicant's excessive alcohol consumption is clearly underscored by the alcohol-related incidents in 1988 when Applicant was detained on the college campus for being under the influence of alcohol; in September 1988 for DWI; in 1991 for driving a company vehicle after having consumed alcohol; and, in May 1992 in driving an automobile after having consume alcohol. However, Applicant's participation in treatment between February and April 1994, the absence of alcohol-related incidents since 1992, and the demonstrated consistency in Applicant's accounts of his drinking history, persuade me to conclude Applicant will not abuse alcohol in the future.

The Government has established a case of intentional falsification or omission under Criterion E. The information was clearly relevant and material to the Government's investigation into Applicant's background qualifications for having a security clearance. Applicant's decision to falsify his security form and sworn statements, indicates he may not disclose the truth in the future if he believes the truth may not be in his best interests.

The fact Applicant finally revealed the truth in June 1996 does not extenuate or excuse the legal consequences of his earlier intentional falsifications. An applicant applying for a security clearance has the responsibility to provide forthright and honest information during all phases of the investigation and not just when he wants to. For the Government to conduct the investigation in any other way would render the entire process meaningless.

The Government has established a violation of 18 USC 1001, which constitutes proscribed criminal conduct under Criterion J. Applicant's intentional falsification of material information was designed to mislead the Government about his drug history so that he could increase his chances of receiving a clearance. Applicant's favorable character evidence from his operations manager and his statements about his positive activity in the church, has thoroughly been considered but is insufficient to overcome Applicant's drug abuse and his intentional falsifications, which also constitute criminal conduct.

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. Against the Applicant.
- e. Against the Applicant.

f. Against the Applicant.

g. Against the Applicant.

h. For the Applicant.

i. For the Applicant.

j. For the Applicant.

k. For the Applicant.

m. Against the Applicant.

n. Against the Applicant.

o. Against the Applicant.

Paragraph 2 (excessive alcohol use): 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.

g. For the Applicant.

Paragraph 3 (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 4 (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 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. Subparagraph 1o is found against Applicant as Applicant's sworn statement on June 25, 1996 (Item #4) reflects admissions of marijuana and cocaine use, as well as LSD use after February 1994.
2. The exact periods of use and non-use are ambiguous because Applicant chose to provide an incomplete or conflicting picture of his drug use on several occasions (Items #3, #5, and #6), before providing a correct account of his drug history. (Item #4).
3. According to Item #4, after counseling in April 1994, Applicant refrained from drug use until October 1994 when he resumed using cocaine and marijuana two or three times a week until August 1995. His last use of cocaine was in June 1996.
4. Applicant was spending approximately \$120 a month on cocaine in 1992 and 1993.