

DATE: April 18, 1997

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 96-0644

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR THE GOVERNMENT

Carla Alexandra Conover, Esquire

Department Counsel

FOR THE APPLICANT

Pro Se

STATEMENT OF THE CASE

On 6 September 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 12 December 1996, Applicant answered the SOR and requested an administrative decision on the record.⁽²⁾ Applicant did not respond to the Government's File of Relevant Material (FORM)--issued 10 January 1997; the record in this case closed 5 March 1997, the day the response was due at DOHA. The case was originally assigned to a different Administrative Judge on 14 March 1997, but was reassigned to me on 11 April 1997 because of caseload considerations. I received the case on 14 April 1997 to determine whether clearance should be granted, continued, denied or revoked.

The SOR is attached to this Decision and incorporated by reference.

FINDINGS OF FACT

Applicant admitted the original allegations of the SOR, except for subparagraphs 1. a., b., c., m., r., s., t., u., t., u., v., w., x., 2.a., 2.a.(1), 2.a.(2), 2.a.(3), 2.b.(2), 2.b.(3), 2.c.(2), and paragraph 3. (no answer received). Accordingly, I incorporate the admissions as findings of fact.

Applicant is a 36-year old employee of a defense contractor seeking to retain a secret clearance.

On 27 May 1991, Applicant falsified a National Agency Questionnaire (NAQ)(DD Form 398-2)(Item 7) when he answered "no" to questions designed to elicit his drug abuse history.⁽³⁾ On 4 November 1991, Applicant's clearance was

revalidated. On 6 March 1995, Applicant again falsified a National Agency Questionnaire (NAQ)(DD Form 398-2) (Item 8) when he answered "no" to questions designed to elicit his drug abuse history. On 12 September 1995, Applicant falsified a sworn statement to the Defense Investigative Service (Item 9) when he stated "Regarding illegal drugs. I have never used an illegal drug or substance in my life." On 2 May 1996, Applicant falsified another sworn statement (Item 10) when he understated his cocaine and marijuana use, omitted other drug use, understated his drug purchases and sales, and provided false dates of last use for those drugs he did admit using. Applicant did not disclose the full extent of his drug abuse until he was confronted with a third subject interview on 27 August 1996 (Item 11): Applicant first used powdered cocaine in 1980, and used it approximately ten times from 1980-82; he used it ten times a year from 1982-91, and twice a year from 1991 to November 1994, the last time he used. He tried crack cocaine in February 1991, using it three times a week until April 1991; he used crack once a month from April 1991 to May 1996. He usually bought cocaine when he used it, last purchasing powdered cocaine in May 1991, crack in December 1995. He sold powdered cocaine on and off from 1982 to May 1991, once buying \$750.00 worth and tripling his money. Applicant first used marijuana in 1978, and used it monthly to 1979, daily from September 1979 to July 1982, and four times a year from September 1982 to Christmas 1995. He bought and sold marijuana, once buying 1,000.00 worth and selling it for \$500.00 profit; he made other sales to "smoke for free." He last sold marijuana in 1990 or 1991. He cultivated marijuana once in 1980. Applicant also used, bought, and sold other drugs in smaller amounts and over shorter periods of time: LSD--used six times from 1982 to late 1980s; bought \$5.00 worth each time; made accommodation sales to friends. Hallucinogenic mushrooms--used six times in 1988; bough and sold minor amounts. Quaaludes--used monthly 1980-1982; bought and sold minor amounts. Methamphetamines--used five or six times (last in the mid-1980s); bought on occasion.

In 1990, Applicant was ordered into a drug treatment program because of his multiple alcohol arrests. Although the program tried to get Applicant to face his drug problems, Applicant's participation was minimal and he did not embrace recovery. On 3 March 1990, 14 August 1990, 27 August 1990, 17 September 1990, and 3 December 1990, Applicant tested positive for cocaine and/or marijuana.⁽⁴⁾

Applicant falsified his NAQs and sworn statements because he feared that he would not obtain/retain his security clearance and would lose his job. He now states an intent to "stay away from illegal drugs."

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 cultivation . . . purchase, sale
- (3) failure to successfully complete a drug treatment program prescribed by a credentialed medical professional. Current drug involvement, especially following the granting of a security clearance. . . will normally result in an unfavorable

determination.

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;

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 mushrooms, methamphetamines, quaaludes, and LSD, is sufficiently remote to suggest that he will not use these drugs in the future. However, his use of cocaine and marijuana presents a different question. Applicant's use of cocaine and 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 a similar statement on his sworn statement in May 1996--yet used cocaine in ay 1996. Applicant's sales of cocaine and marijuana for significant profit--and his accommodation sales of other drugs--are more remote than his use of cocaine and marijuana, but nevertheless remain disqualifying. His disregard of drug laws raises serious doubts about his willingness or ability to comply with regulations if they appear contrary to his perceived interest. Although Applicant has not been formally diagnosed as drug dependent, I note the poor prognosis from the 1990-1991 drug treatment coupled with Applicant's continued abuse of marijuana and cocaine into 1995 and 1996 respectively. Further, Applicant consistently used drugs after being granted a security clearance in 1991. 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 were 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 third subject interview suggests that he cannot be relied upon to speak the truth if the truth presents possible adverse consequences for 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. Further, Applicant's sales of marijuana and cocaine--for significant profit--constitute criminal conduct not mitigated by the mere passage of time or extenuated by any evidence provided by Applicant. 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: Against 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: Against the Applicant

Subparagraph k: For the Applicant

Subparagraph l: For the Applicant

Subparagraph m: Against the Applicant

Subparagraph n: For the Applicant

Subparagraph o: For the Applicant

Subparagraph p: Against the Applicant

Subparagraph q: For the Applicant

Subparagraph r: For the Applicant

Subparagraph s: For the Applicant

Subparagraph t: Against the Applicant

Subparagraph u: Against the Applicant

Subparagraph v: Against the Applicant

Subparagraph w: Against the Applicant

Subparagraph x: Against the Applicant

Subparagraph y: Against 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

Paragraph 3. Criterion J: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: 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. In the interim, Applicant had responded to the SOR, but the answer was returned to him for failure to comply with administrative instructions for answering the SOR. I note that the actual answer in the file still fails to comply completely with those instructions.

3. Item 7 shows that Applicant received a secret clearance on 15 May 1984; his sworn statement of 2 May 1996 (Item 10) admits that he falsified his drug abuse history in approximately 1982 for fear he would not obtain a security clearance. While this falsification is not alleged in the SOR--and thus not before me on the merits of the Government's case--I have considered this falsification on the issue of Applicant's general credibility and rehabilitation.

4. Although he did test negative on drug tests administered on 12 December 1990, 21 December 1990, and 22 arch 1991.