

DATE: February 26, 1997

In re:

SSN:

Applicant for Security Clearance

ISCR OSD Case No. 96-0696

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR THE GOVERNMENT

Teresa A. Kolb, Esq.

Department Counsel

FOR THE APPLICANT

Pro se

STATEMENT OF THE CASE

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) dated September 24, 1996, to the 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 the Applicant and recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked.

A copy of the SOR is attached to this Decision and included herein by reference.

On September 30, 1996, Applicant responded to the allegations set forth in the SOR and requested a hearing. The case was assigned accordingly to this Administrative Judge on October 24, 1996, and on January 10, 1997, a hearing was scheduled for January 30, 1997. At the hearing which was held as scheduled, four Government exhibits and four Applicant exhibits were admitted into evidence and testimony taken from the Applicant. A transcript of the hearing was received by this office on February 19, 1997.

FINDINGS OF FACT

After a thorough review of the evidence in the record, and upon due consideration of same, this Administrative Judge renders the following findings of fact:

Applicant is a 60 year old ----- who has worked continuously for his current employer (company A) since June 1964. He seeks to retain a Secret security clearance which he has held since September 14, 1964.

At seventeen years old, Applicant entered active duty in a branch of the United States military where he served

honorably until discharged at the rank of staff sergeant on January 15, 1958. Within a couple of days of his discharge, Applicant was hired by company A. Promoted to junior engineer the following year, by 1960 Applicant had saved enough money to attend college. As a college student, Applicant worked summers and vacations for company A. After earning his Bachelor of Science degree in electrical engineering in 1964, Applicant commenced full-time employment with company A.

One of the few individuals at company A knowledgeable about a particular ----- system, Applicant devoted himself to his work. His personal life did not enjoy similar success and in 1981 his spouse left him. Applicant commenced a bachelor lifestyle, socializing at his leisure. At a party in 1981, Applicant was introduced to cocaine which he tried out of curiosity. Applicant started frequenting expensive night clubs on weekends where he would meet other cocaine users. Often he went to after-hour clubs or parties with these persons and would snort cocaine with them, in knowing disregard of company A and Department of Defense policies prohibiting such use. His weekend recreational use of cocaine cost him about \$100.00 per week.

Sometime in 1986, Applicant was introduced to "free-basing" cocaine. Applicant enjoyed the immediate sensation produced from smoking the drug and he started to crave cocaine. As he became more heavily involved in cocaine, he began to care less about his acquaintances and his appearance. He stopped attending night clubs and began staying home to use cocaine, having his supplier deliver cocaine to his residence. By about 1989, Applicant was no longer able to confine his use to weekends only and he started smoking cocaine daily at a cost to him of \$1,000.00 per week. Applicant's income was no longer sufficient to pay for his habit. By the early 1990's, he had depleted his savings and checking accounts, cashed in his individual retirement accounts, stocks and savings bonds, taken a loan out on his car, charged his credit cards to the maximum, and even borrowed \$30,000.00 from his 401K pension plan. Applicant avoided having his credit privileges withdrawn only by taking out a second mortgage on his personal residence in 1992.

Applicant used cocaine as many days in a row as he could, going about four days consecutively without sleep. While his performance at work began to decline in the late 1980's, it never led to any disciplinary action or criticism from his superiors. Since he had been at the company for over twenty-five years, he was able to take a sick or vacation day at his discretion. On occasion, Applicant took vacation time when he did not feel up to going to work after abusing cocaine the night before. Applicant managed to refrain from the use of cocaine when on business trips.

By the mid 1990's, Applicant had developed paranoia concerning his job security and financial status, fearful that someone would recognize his problem. Sometime in 1994, someone at work put on Applicant's desk a brochure concerning substance abuse treatment. Applicant placed the brochure in the trunk of his automobile where it remained until April 1995 when realizing he needed help for his addiction, Applicant admitted himself on April 11, 1995, to the addiction unit of a local hospital (treatment facility B) where he was diagnosed on initial impression as cocaine dependent. A six to seven gram per week cocaine abuser, Applicant acknowledged that his cocaine abuse was out of control. His realization of his illness and willingness to ask for help were noted as strengths. After seven days of inpatient treatment, to include detoxification with Librium, individual and group therapy, and Alcoholics Anonymous (AA), Narcotics Anonymous (NA) and drug and alcohol education meetings, Applicant was discharged on April 18, 1995, to follow-up in a fourteen day outpatient program.

Following his successful completion of treatment facility B's two-week outpatient rehabilitation program, Applicant continued in counseling on a biweekly basis with registered nurse and licensed social worker C. He was diligent about coming to his individual therapy sessions and attending AA and Cocaine Anonymous (CA) meetings. Applicant's therapy sessions with registered nurse C were terminated on April 9, 1996, as Applicant had made such progress that both the therapist and the supervising psychiatrist consider Applicant completely rehabilitated.

During his hospital stay, Applicant informed the manager of the employee assistance program (EAP) at company A that he was undergoing treatment for cocaine abuse. After his discharge, Applicant on May 2, 1995, met with the EAP manager who expressed his availability to be part of Applicant's ongoing treatment support network. For at least the next eighteen months, Applicant met with the EAP manager once per month. Applicant has demonstrated to the EAP manager an active commitment to self-help groups and abstinence.

In conjunction with a periodic reinvestigation for his security clearance, Applicant executed a National Agency

Questionnaire (NAQ), a Department of Defense Form 398-2, on September 26, 1995. Applicant answered affirmatively the questions posed thereon regarding any illegal drug involvement on his part, and he detailed use of cocaine from 1981 to April 10, 1995, on a daily basis until he entered a twenty-one day recovery program. Applicant asserted his intent to "stay clean the rest of [his] life, one day at a time."

A daily attendee at AA (primarily) and CA meetings since his discharge from treatment facility B's program, Applicant goes on commitments regularly (two nights per week), speaking about recovery to patients on addiction treatment units of two local hospitals, serving as the prime speaker and group conductor for one CA group. Applicant has a sponsor in CA who he sees every week and he has not had a craving for cocaine in a year. With the assistance of daily AA/CA meetings and regular speaking engagements, Applicant intends to remain drug free as well as alcohol free in the future.⁽¹⁾ He no longer associates with known drug users, and at his spouse's suggestion, changed his telephone number to avoid any calls from his former drug suppliers.

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the seriousness, recency, frequency and motivation for an applicant's conduct; the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the circumstances or consequences involved; the age of the applicant; the absence or presence of rehabilitation, the potential for coercion or duress, and the probability that the conduct will or will not recur in the future. *See* Directive 5220.6, Section F.3. and Enclosure 2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

DRUG INVOLVEMENT

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.

Drugs are defined as mood and behavior altering:

- (a) drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens) and
- (b) inhalants and other similar substances.

Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

Conditions that could raise a security concern and may be disqualifying include:

- (1) any drug abuse
- (2) illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution

Conditions that could mitigate security concerns include:

- (3) a demonstrated intent not to abuse any drugs in the future
- (4) satisfactory completion of a drug treatment program prescribed by a credentialed medical professional.

* * *

Under the provisions of Executive Order 10865 and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the 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 is nonetheless security worthy. As noted by the United States Supreme Court in *Department of 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." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the Applicant.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility and demeanor of the Applicant, this Judge concludes that the Government has established its case with regard to Criterion H.

Applicant presents a history of cocaine abuse which commenced following a marital separation in 1981 and continued until he entered a recovery program on April 11, 1995. Initially a weekend recreational abuser, Applicant rapidly developed a serious addiction after he started free-basing in 1989. The extent to which cocaine became a problem for him is perhaps best exemplified by the extent to which Applicant compromised his financial situation to pay for his habit. Applicant borrowed some \$30,000.00 from his 401 K pension plan at work and took a second mortgage on his residence. His compulsive use of cocaine is especially serious where it continued in knowing disregard of his employer's and the Department of Defense's policies against illegal drug involvement.

In assessing the current security significance of Applicant's cocaine abuse, this Administrative Judge must consider the adjudicative guidelines pertaining to drug involvement set forth in Enclosure 2 to the Directive. Disqualifying conditions 1. and 2. are applicable because of his extensive abuse and purchases of cocaine. Under the corresponding mitigating conditions (MC), the security concerns raised by drug abuse may be overcome if the abuse is not recent (MC 1.), is infrequent (MC 2.), there is demonstrated intent not to use any drugs in the future (MC 3.) or satisfactory completion of a drug rehabilitation program (MC 4.). MC 1. and 2. clearly are not apposite to daily abuse which ceased less than two years ago. However, both MCs 3. and 4. apply in Applicant's favor. In light of his addictive use of cocaine, it is all the more important that his stated intent to refrain from all drug abuse be confirmed by positive action. To Applicant's credit, he admitted himself to the addictions treatment unit at treatment facility B when he finally realized that his cocaine abuse was out of control. By all accounts, he successfully completed the twenty-one day program. For one year after his discharge, he continued on a biweekly basis in aftercare counseling with a registered nurse/licensed

social worker. Both this therapist and her supervising psychiatrist consider Applicant to be completely rehabilitated, based on Applicant's acceptance of personal responsibility for his addiction, his very positive response to therapy, and his diligent attendance at his individual therapy sessions and at AA/CA meetings.

Furthermore, Applicant has terminated his association with the individuals who contributed to his drug abuse and purchases. At his spouse's suggestion, he changed his telephone number in an effort to avoid any contact with his former suppliers. While these lifestyle changes are conducive to continued abstinence, it is his active participation in AA/CA since April 1995 which best demonstrates the strength of his resolve to ensure no recurrence of drug abuse. In addition to the positive reinforcement of daily meetings, Applicant since at least August 1995 has regularly spoken to recovery groups at two local hospitals where he has demonstrated a sincere commitment to his own recovery as well as to the patients. He has not missed a meeting during that period of time. These efforts in reform taken since April 11, 1995, are sufficient to overcome his very serious history of abuse. Accordingly, subparagraphs 1.a., 1.b., 1.c., 1.d., and 1.e. are resolved in his favor.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1. Criterion H: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Elizabeth M. Matchinski

Administrative Judge

1. Although there is no evidence Applicant has suffered from an addiction to alcohol, he intends to remain alcohol free to prevent any urges or desires to relapse into cocaine abuse. See Tr. p. 42.