

April 10, 1997

In RE:

SSN:

Applicant for security clearance

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ISCR Case No. 96-0724

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

Appearances

FOR THE GOVERNMENT

Melvin A. Howry

Department Counsel

FOR THE APPLICANT

Pro se

STATEMENT OF CASE

On October 3, 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 the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The SOR is attached.

Applicant filed an Answer to the SOR on or about November 8, 1996.

Applicant elected to have this case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant material (FORM) on December 11, 1996. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received his copy on December 13, 1996, and submitted nothing in reply. The case was received by the undersigned for

resolution on April 9, 1997. The issue raised here is whether the Applicant's admitted drug abuse militates against the granting of a security clearance.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, and the File of Relevant Material. The Applicant is 45 years of age, and is employed by a defense contractor who seeks a secret security clearance on behalf of the Applicant.

Criterion H - Drug involvement

1.i.~1.k. The Applicant's initial period of drug abuse was during the period 1965~1969. During this period, when the Applicant was a teenager, he used LSD, mescaline and marijuana. In his Answer, Government Exhibit 3 (GX 3), he describes his use of mescaline as "maybe 3 or 4 times," and that he "smoked marijuana less than 20 times" (GX 3 at page 2, *see also* GX 5 at page 3).

1.a.~1.h., 1.l. and 1.m. The Applicant's second period of drug abuse began in the summer of 1991, and continued until August of 1995. [He had been granted a security clearance in November of 1985 (GX 5 at page 2)]. During this period, he abused amphetamine/methamphetamine "speed" on a daily basis, and to the point of dependence (GX 5 at page 2, and GX 8 at the second to the last page). He also "used cocaine monthly" (GX 5 at page 3). He describes his purchases of these illegal substances as follows: "[t]he average monthly cost for my drug habit was \$700.00 per month" (GX 5 at page 3).

In August of 1995, the Applicant was arrested for, and subsequently pled nolo contendere, to a charge of Battery (GX 6). This was a domestic dispute, and both the Applicant and the victim had snorted cocaine prior to the physical confrontation (GX 7 at page 2).

From (circa) 1993~1994, the Applicant received counseling for a condition diagnosed as Amphetamine Dependence. From January 9~25, 1995, and again from February 16 to March 29, 1995, the Applicant received treatment for his drug abuse. His final discharge diagnosis was that he was suffering, in part, from an "Amphetamine induced psychotic disorder," and from "Amphetamine Dependence" (GX 8 at the second to the last page). Subsequent to this discharge, the Applicant continued to use both methamphetamine and cocaine.

Mitigation

In his May 1996 sworn statement, the Applicant avers that he has "no intention for the use of illegal drugs in the future" (GX 5 at page 3); and in his Answer to the SOR submits that he is "drug free" (GX 3 at page 3).

POLICIES

Enclosure 2 and Section F.3. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. The conditions should be followed in every case according to the pertinent criterion, however, the conditions are neither 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 clearance case presents its own unique facts and circumstances, it should not be assumed that these conditions exhaust the realm of human experience, or apply equally in every case. Conditions most pertinent to evaluation of this case are:

Drug Involvement

Conditions that could raise a security concern:

(1) any drug abuse (drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction);

(2) illegal drug possession, including . . . purchase

Conditions that could mitigate security concerns:

(3) a demonstrated intent not to abuse any drugs in the future;

As set forth in the Directive, "[each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature and seriousness of the conduct and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, 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 make out a prima facie case under Criterion H (drug involvement) 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 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 be repeated, and that the Applicant presently qualifies for a security clearance.

The improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places. If an applicant has demonstrated a lack of respect for the law in his private affairs, then there exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

CONCLUSIONS

The Applicant's most recent period of admitted drug abuse spans a period of about four years. It culminated with his diagnosed addiction to amphetamine in arch of 1995. Despite his treatment for dependence, he continued his drug abuse until at least August of that year, only 16 months ago (the date of the Government's FORM ends the time line used for adjudication purposes in this case). As recently as June 10, 1996, his prognosis for recovery was also listed as only "fair" (GX 10). Although it now appears that the Applicant intends no future drug abuse, it is too soon to say that his fairly recent addiction is not of present security significance.

Considering all the evidence, the Applicant has not rebutted the Government's prima facie case regarding his drug involvement. The Applicant has thus not met the mitigating conditions of Criterion H, and of Section F.3. of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Criterion H.

FORMAL FINDINGS

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

Paragraph 1: 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. Against the Applicant.
- i. Against the Applicant.
- j. Against the Applicant.
- k. Against the Applicant.
- l. Against the Applicant.
- m. Against the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge