

DATE: April 15, 1997

In RE:

SSN: -----

Applicant for security clearance

ISCR OSD Case No. 96-0730

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 October 4, 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 21, 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 one witness. Testimony was taken from Applicant. The transcript was received on February 10, 1997.

FINDINGS OF FACT

The Following Findings of Fact are based on the documentation and testimony. The SOR alleges drug abuse (Criterion H), personal conduct (Criterion E), excessive alcohol consumption (Criterion G), and criminal conduct (Criterion J). I have reviewed the record, evaluated witness credibility, and issue the following Findings of Fact:⁽¹⁾

Applicant is 37 years old and employed by a defense contractor. He seeks a secret level clearance.

On August 13, 1984, Applicant falsified a Personnel Security Questionnaire (PSQ) (GE #2) when he answered "no" to question 15a, requiring information about his drug history. Exhibit 4 reflects: (1) he used marijuana with varying

frequency from 1976 to at least 1984, and purchased marijuana from approximately August 1980 to 1984; (2) he used LSD in 1981; (3) he used hashish on five occasions from approximately 1979 to 1980, and purchased the drug between 1979 and 1980; (4) he used Quaaludes six or seven times from 1978 to at least 1979; and, (5) he used amphetamines ten times in 1977.

On April 11, 1996, Applicant falsified a Questionnaire for National Security Positions (Form 86) (GE #1) when he, while admitting he used drugs, furnished an incomplete account of his drug use in response to question 24a and 24b.⁽²⁾ He falsely indicated he had used cocaine only two times between January 1996 and February 1996, when in fact he used cocaine approximately four times a year from 1984 to 1987; he used cocaine six times a year between 1987 and 1990; he used cocaine six times a year from 1990 to 1994 and twice during rehabilitation in 1994; he used cocaine on a weekly basis from January 1995 to July 1995;⁽³⁾ and, he used cocaine approximately three times between August 1995 to January 1996. (GE #4).⁽⁴⁾ He also omitted: (1) his occasional use of crack cocaine in 1995; (2) his periodic use of marijuana from 1976 to at least June 1995, (3) his LSD use; (4) his hashish use; (5) his Quaalude use; and, (6) his amphetamine use.

On the same form on April 11, 1996 (GE #1), Applicant was not truthful when he answered "no" to question 24c, requiring disclosure of information regarding the purchase of any drug in the last 7 years. In fact, Applicant purchased cocaine, marijuana and hashish as indicated in subparagraphs 1b, 1g, and 1j of the SOR. Also, while answering "yes" to question 23d of GE #1, Applicant did not furnish all his alcohol or drug related offenses. And, although he answered "yes" to question 25, Applicant did not reveal his alcohol related treatment from February to August 1993.

On July 2, 1996, Applicant falsified a sworn statement (GE #3) by understating the full extent of his marijuana and cocaine use, and denying purchase of either drug or use of crack cocaine. He also denied receiving any kind of drug counseling or treatment. In addition, although he disclosed three alcohol-related incidents, he did not mention his drinking conviction in 1982 and his alcohol-related reckless driving conviction in June 1987, when he hit two parked automobiles. (GE #5).

Applicant received treatment from July to August 1995 for Polysubstance abuse, cocaine and alcohol. (GE #7).⁽⁵⁾

According to GE #3, Applicant began drinking in 1980. His drinking from 1984 to 1989 increased to 12 beers over the weekend although he sometimes drank beer three or four times a week. In September 1982, Applicant was cited for public intoxication. In March 1986, Applicant was found guilty of driving while under the influence of alcohol (DWI). In June 1987, Applicant was convicted of reckless driving.⁽⁶⁾ From 1989 to 1993, he drank about six beers and a bottle of wine on a weekend basis. In December 1992, Applicant pled guilty to DWI. From 1995 to the present, he consumes about one-half a bottle of wine a month and becomes intoxicated about six times a year. He received a letter of discipline in June 1995 from his employer for reporting to work intoxicated. Applicant continues to drink alcohol even after his treatment for alcohol dependence from February to August 1995. Applicant asserts his drinking is only at moderate levels. (Answer to SOR).

Applicant tested positive for cocaine on January 6, 1996 and was terminated from his employer on February 6, 1996.

Applicant's explanations why he falsified the security forms and sworn statements are not credible. First, there is no evidence to support Applicant's claim he was led to believe the Agent from the Defense Investigative Service (DIS) would be returning for two follow up interviews.⁽⁷⁾ Second, I am unpersuaded Applicant did not know he was required to tell everything about his drug past because Applicant had a security clearance before and was familiar with the security clearance process. (Tr. 21). Third, Applicant's claim he was not trying to omit any information is simply not believable given his admission (Exhibit #3) he falsified information to protect his job and/or his clearance.⁽⁸⁾

Applicant believes he is a good employee and not a security risk. He completed drug treatment in August 1995 because if had not, he would not have been able to return to work. Applicant attends Narcotics Anonymous (NA) and Alcoholics Anonymous (AA) at the present time and is currently working either Step 2 or Step 3 of the 12 Step Program of AA.⁽⁹⁾

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,...purchase....
3. failure to successfully complete a drug program prescribed by a credentialed medical professional. Current drug involvement, especially following the granting of a security clearance....

Factors for Clearance:

None.

Criterion G (alcohol abuse)

Factors Against Clearance:

1. alcohol-related incidents away from work, such as driving under the influence....
2. alcohol-related incidents at work, such as reporting to work in an intoxicated or impaired condition.
3. diagnosis by a credentialed medical professional of alcohol abuse or alcohol dependence.
5. consumption of alcohol, subsequent to a diagnosis of 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 deliberated omission...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.

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 G (alcohol abuse), 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 to demonstrate an applicant's unsuitability for safeguarding classified information.

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

The Government has established a case of drug involvement within the scope of Criterion H. Applicant's use of cocaine was lengthy and compounded by the fact he purchased the drug on a regular basis and lost a job on February 6, 1996 because he tested positive for cocaine use on January 30, 1996. Applicant used cocaine, crack cocaine and marijuana after receiving his company confidential security clearance in July 1982. He continued using cocaine until at least January 1996 even though he had just completed treatment four months earlier in August 1995. In the last twelve years, Applicant lied about his drug use on three official government documents.

A case of excessive alcohol consumption has been established under Criterion G. Applicant engaged in excessive alcohol consumption since approximately September 1982. Applicant has a record of 5 alcohol-related incidents in the last 15 years, beginning with public intoxication in 1982. In March 1986, June 1987, and December 1992, Applicant was convicted of alcohol-related offenses while driving. In June 1995, Applicant received a letter of discipline for reporting to work intoxicated. And, he continues to drink alcohol without presenting independent evidence of meaningful participation in aftercare or long term therapy.

Applicant's intentional falsification of his security forms and his sworn statement establishes all the elements of Criterion E. Instead of disclosing his entire drug history, Applicant decided to deny any drug use on a security form in August 1984. When presented with the same question on a security form in April 1996, Applicant intentionally furnished only a glimpse of his true drug history and completely denied he had ever purchased drugs. In addition, Applicant provided only a partial history of his criminal record along with a partial picture of his alcohol-related treatment.

Applicant's intentional falsifications also constitute criminal conduct under 18 USC 1001, within the scope of Criterion J. The falsifications comprised the intentional omission of material information designed to influence the direction of the government security investigation into Applicant's security clearance qualifications. Given (1) Applicant's cocaine use from 1984 to January 1996 and his multiple falsifications of cocaine use (which also establishes criminal conduct), and, (2) Applicant's history of excessive alcohol consumption since 1976, with little evidence of demonstrating committed recovery or control, Applicant has failed to meet his ultimate burden of persuasion under Criterion H, G, E, and J.

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. For the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. For the Applicant.
- g. For the Applicant.
- h. For the Applicant.
- i. For the Applicant.
- j. For the Applicant.
- k. For the Applicant.
- l. For the Applicant.
- m. Against the Applicant.
- n. Against the Applicant.

Paragraph 2 (alcohol consumption): AGAINST THE APPLICANT.

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

- d. Against the Applicant.
- e. Against the Applicant.
- f. For the Applicant.
- g. Against the Applicant.
- h. For the Applicant.
- i. Against 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.
- f. Against the Applicant.
- g. Against the Applicant.
- h. 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. Applicant's admissions shall be incorporated in the Findings of Fact.
2. Question 24a requires disclosure of drug use since the age of 16 or in the last 7 years, whichever is shorter. Question 24b requires disclosure of drug use while possessing a security clearance.
3. Yet, in his answer to the SOR, Applicant claimed that before January 1996, he had not used cocaine for a year.
4. Applicant even used cocaine, crack cocaine, and marijuana after receiving his confidential security clearance in July 1982.

5. But Applicant used cocaine on approximately three more occasions until at least January 1996.
6. The original charges were DWI and reckless driving. Applicant had been drinking before he was arrested.
7. The Agent's testimony has been thoroughly evaluated and I find he did not give Applicant the impression he would be returning for additional interviews. On the contrary, the Agent's return was caused by the discrepancy between the drug information initially provided by Applicant and the medical records. (Tr. 16). Even if Applicant's claim is valid, I find Applicant still knew the information he was providing was incorrect but he decided to intentionally conceal the information because he wanted to protect his job and his clearance. (Tr. 24; GE #3).
8. Applicant repeatedly indicated in his Answer he was not trying to hide anything. If he was not trying to hide anything, what was he trying to do? There is evidence in the record to infer or suggest Applicant made any voluntary effort to disclose all his drug use on his own.
9. However, Applicant could not remember what Step 2 was.