

February 25, 1997

In RE:

SSN:

Applicant for security clearance

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ISCR OSD Case No. 96-0764

## **DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

### Appearances

#### FOR THE GOVERNMENT

Martin H. Mogul

Department Counsel

#### FOR THE APPLICANT

*Pro se*

### STATEMENT OF CASE

On October 24, 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 12, 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 18, 1996, and Applicant's reply was received on January 17, 1997. The case was

received by the undersigned for resolution on January 30, 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, the File of Relevant Material and Applicant's Response. The Applicant is 47 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant.

### **Criterion H - Drug involvement**

1.a.~1.c. The Applicant "used marijuana regularly, on a near daily basis, from 1968 to Jul[y of 19]95. In addition to possessing and using marijuana, . . . [he] bought marijuana and sold small quantities on an occasional basis to acquaintances . . . ." (Government Exhibit (GX) 5 at page 1). From June of 1967 to April of 1972, the Applicant "sold marijuana one or two times weekly . . . ." (GX 5 at page 1).

1.d., 1.e. and 1.h. The Applicant used cocaine, "daily when available" (GX 6 at page 25), from about July of 1993 until July of 1995 (GX 5 at page 1). "Initially, . . . [he] bought crack cocaine in five to ten rock quantities for \$100.00 to \$200.00. Later, . . . [the Applicant] bought it in two or three rock quantities for \$20.00 a rock. . . . [He] used to smoke it while driving to and from work." (GX 5 at page 2).

1.f. and 1.g. During the period of his cocaine abuse, the Applicant spent most of what he earned to support his drug habit. He was also caught stealing from a co-worker's desk, the Summer of 1995, at his place of employment; and as a result, was suspended, without pay, for about four weeks (GX 5 at page 2).

1.i. and 1.j. The Applicant received inpatient treatment from July 3~31, 1995, for a condition diagnosed, in part, as Cocaine Dependency, Cannabis Dependency in stable remission, and Polysubstance Abuse (GX 5 at page 2, and GX 6). He also received outpatient treatment for his cocaine dependency until October 16, 1995 (GX 5 at page 2). He currently participates in an "After Care Program and consistently attends weekly meetings . . . ." (Applicant's Exhibit (AppX) at page 5).

1.k.~1.n. Besides the marijuana and cocaine abuse noted above, the Applicant also used "speed" (amphetamines), "acid" (LSD-lysergic acid diethylamide), heroin once in the mid 1970s, and psilocybin mushrooms in the early 1980s (GX 2 at pages 3 and 25).

### **Mitigation**

The Applicant offers evidence from his After Care Program Provider who opines that his "prognosis for complete recovery is recorded as very good." (AppX at page 5). He also offers very supportive evidence from a member of the legal profession, and from fellow participants in his after care (AppX at pages 4, 6 and 7).

## **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, sale . . . .

Conditions that could mitigate security concerns:

(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.

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 admitted drug abuse spans a period of nearly 30 years. It culminated with his addiction to both marijuana and cocaine in July of 1995, only 18 months ago (the date of the Applicant's Response to the Government's FORM being the time line used for adjudication purposes in this case). The Applicant's dependency was so severe, that he smoked the crack cocaine while commuting to and from work; he spent most of what he earned to support his addiction; and he stole from the desks of co-workers. The Applicant describes his dependency in the following terms: "It really grabbed me and I became a closet crack head." (GX 5 at pages 1~2). Although it now appears that the Applicant is on the road to recovery, 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 Criteria 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.
- n. 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