

DATE: March 19, 1997

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 96-0776

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR THE GOVERNMENT

William S. Fields, Esquire

Department Counsel

FOR THE APPLICANT

Pro Se

STATEMENT OF THE CASE

On 24 October 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 11 November 1996, Applicant answered the SOR and requested an administrative decision on the record. Applicant did not respond to the Government's File of Relevant Material (FORM)--issued 16 December 1996; the record in this case closed 1 February 1997, the day the response was due at DOHA. The case was originally assigned to a different Administrative Judge on 20 February 1997, but was reassigned to me on 17 March 1997 because of caseload considerations. I received the case on 17 March 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; accordingly, I incorporate the admissions as findings of fact.

Applicant is a 27-year old employee of a defense contractor seeking a secret clearance.

On 16 October 1995, Applicant falsified a National Agency Questionnaire (NAQ)(DD Form 398-2)(Item 4) when he answered "no" to questions designed to elicit his drug abuse history. On 7 May 1996, Applicant falsified a sworn statement to the Defense Investigative Service (Item 6) when he understated his marijuana use, omitted his other drug use, and claimed to have last used marijuana in 1990.⁽²⁾ He also falsely asserted that his two arrests in September 1989

and September 1992 did not involve drug activity by Applicant, but by Applicant's companions. Applicant did not disclose the full extent of his drug abuse until he was confronted with a second subject interview on 27 August 1996 (Item 5): Applicant first used marijuana in 1983, and used it daily from 1983 to 1984; after refraining from use from 1984 to 1986, he resumed daily use from 1986 to 1989. From 1989 to June 1996, he experienced periods where he used marijuana weekly, but had times where he did not use the drug for six months. From January 1995 to June 1996, he used marijuana three or four times a year, the last time in June 1996. He bought marijuana weekly between 1983 and 1989, spending \$40.00 for one-quarter ounce. From 1989 to 1993, he bought small amounts of marijuana; he has not bought marijuana since 1993. He successfully cultivated marijuana five or six times between 1988 and Spring 1995; he dried the marijuana for his own use, although he sold one plant for \$100.00 on one occasion between 1987 and 1993. He also sold one-quarter ounce of marijuana on two other occasions during the same period, making a small profit each time. In the approximate period 1984 to 1989, Applicant used and purchased hashish and LSD; he also used PCP. Applicant also disclosed that the September 1989 and 1992 arrests did concern his drug involvement; he was not just an innocent bystander to other's misconduct.

Applicant falsified his NAQ and 7 May 1996 sworn statement because he feared that he would not obtain his security clearance and would lose his job. Friends had advised him to not disclose his drug abuse history.

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 . . .

Conditions that could mitigate security concerns include:

- (1) the drug involvement was not recent.
- (3) a demonstrated intent not to abuse any drugs in the future.

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 use and purchase of hashish and LSD, and his use of PCP, are sufficiently remote to suggest that he will not use these drugs in the future. However, his use of marijuana presents a different question. Applicant's use of 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 marijuana in June 1996. He did so knowing that his drug use was contrary to both company and DoD drug policy. His two arrests in September 1989 and 1992 clearly involve Applicant's drug involvement and association with individuals involved in sale of drugs. Applicant's own manufacture and sale of marijuana are not sufficiently remote to conclude that they are unlikely to recur. 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 NAQ and during the subject interview was 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 second subject interview suggests that he cannot be relied upon to speak the truth if the truth presents possible adverse consequences for his own interests. Although

Applicant claims that he falsified several of the documents on the advice of others, I find that Applicant did not rely on such advice in good faith. 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. 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: For the Applicant

Subparagraph k: For the Applicant

Subparagraph l: For the Applicant

Subparagraph m: 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

Paragraph 3. Criterion J: AGAINST THE APPLICANT

Subparagraph a: 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. Applicant bolstered the reliability of these claims by offering to take a polygraph examination to prove the truth of his statements.