

DATE: April 30, 1997

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0022

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR THE GOVERNMENT

Michael H. Leonard, Esquire

Department Counsel

FOR THE APPLICANT

Pro Se

STATEMENT OF THE CASE

On 17 January 1997, 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 24 February 1997, Applicant answered the SOR and initially requested a hearing; however, on 17 March 1997, Applicant changed his mind and requested an administrative decision on the record. On 20 April 1997, Applicant responded to the Government's File of Relevant Material (FORM)--issued 27 March 1997; the record in this case closed 20 April 1997, the day the response was filed. The case was originally assigned to a different Administrative Judge on 23 April 1997, but was reassigned to me on 29 April 1997 because of caseload considerations. I received the case on 29 April 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 using marijuana from 1981 to September 1996, after receiving a security clearance (subparagraphs 1.a. and 1.c.). He denied the remaining allegations of the SOR. Accordingly, I incorporate the admissions as findings of fact.

Applicant--a 38-year old employee of a defense contractor--originally applied for an upgraded clearance to top secret, but now seeks to retain a secret clearance .

On 6 September 1978, Applicant received a secret clearance at his present place of employment. From approximately 1981 to September 1996, Applicant used marijuana three to six times a year at social functions.⁽²⁾ He may use it in the future.⁽³⁾

On 22 March 1996, Applicant falsified an OPM Security Clearance Application (SF 86, Sep 95) (SCA)(Item 5)--executed to begin a background investigation for an upgraded clearance--when he answered "no" to questions designed to elicit his drug abuse history. On 11 October 1996, Applicant continued to deny all involvement with illegal drugs during a subject interview with the Defense Investigative Service. (DIS). He falsified his statements to the agent because he feared he would lose his security clearance. Not until 17 October 1996--when he met with the DIS agent to execute his sworn statement--did he disclose his marijuana use.⁽⁴⁾

Applicant is a well qualified ----- with an extensive list of project experience with government contracts.

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;
- (3) . . . Current drug involvement, especially following the granting of a security clearance, or an expressed intent not to discontinue use, will normally result in an unfavorable determination.

Conditions that could mitigate security concerns include:

None..

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 fifteen year history of drug abuse--in apparent disregard of the illegality of that drug abuse and in apparent disregard for his security clearance--raises serious doubts about his fitness for access to classified information. Given the circumstances of his drug abuse over the years, I conclude Applicant is likely to use marijuana at social functions in the future. I find criterion H. against Applicant.

The Government has established its case under Criteria E. The information sought by the Government on the SCA 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. The Applicant's failure to fully disclose his drug abuse history until he realized he could not shut down the application process suggests that he cannot be relied upon to speak the truth if the truth presents possible adverse consequences for his own interests. (S) 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

Paragraph 2. Criterion E: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: 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's complete description of his drug abuse: "I would estimate I smoked marijuana on a three to six times yearly basis beginning in approximately 1981 and continuing until 30 September 1996. I deny any daily or more regular use of marijuana. I am not saying the three to six times yearly estimate is an exact figure, but it is as accurate as I can state considering the almost fifteen year history of my use of marijuana. It certainly was never much more than six times a year. I deny ever using any other illegal drugs, to include cocaine. I was exposed to cocaine on rare occasions at various parties, but I never used it. I deny ever buying, growing, selling or distributing any illegal drugs. I deny having any drug related arrests or counseling. My use of marijuana was at social gatherings where it was present. On those occasions when I used it, it was passed around between some of the people at the social gathering." (Item 6).
3. "I cannot say for certainty that I would never use marijuana again in the future. If it were passed to me at a party in the future, I may use it. I do not consciously plan to use marijuana at any of these social gatherings. (Item 6). Applicant repudiates this statement in his answer to the SOR (Item 3). However, I find the repudiation not credible. Item 6 is Applicant's sworn statement which bears indication of edits by Applicant. The stated intention of the sworn statement is consistent with Applicant's description of the nature and circumstances of his marijuana abuse over the years.
4. However, he first attempted to end the application process for his top secret clearance. When the agent informed Applicant that the allegations of drug use would still have to be addressed, Applicant disclosed his marijuana use.
5. Applicant's response to the SOR and his request for administrative hearing contain considerable venting about the contents of his background investigation and the security process in general. I note that I have been provided only the contents of the FORM sent to Applicant, not the complete investigation which Applicant apparently obtained from the DIS. However, I observe that Applicant distributes responsibility for his situation everywhere but where it belongs. There is no record evidence to suggest that Applicant was compelled to use marijuana after receiving his clearance in 1978; nor record evidence to suggest that Applicant was compelled to falsely answer the drug questions on his SCA; nor record evidence to suggest that Applicant was compelled to falsely answer the drug questions put to him during his first DIS interview.

