

DATE: May 30, 1997

In re:

SSN:

Applicant for Security Clearance

ISCR OSD Case No. 97-0051

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR THE GOVERNMENT

Martin H. Mogul, Esq.

Department Counsel

FOR THE APPLICANT

Pro se

STATEMENT OF THE CASE

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, as amended by Change 3, issued a Statement of Reasons (SOR) dated February 7, 1997,⁽¹⁾ 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 national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked.

A copy of the SOR is attached to this Decision and included herein by reference.

Applicant responded to the allegations set forth in the SOR on February 28, 1997, with further supplement submitted on March 3, 1997. He requested a hearing, and the case was assigned accordingly to this Administrative Judge on March 27, 1997. On that date, a hearing was scheduled for Wednesday, April 23, 1997. At the hearing held as scheduled, nine Government exhibits and five Applicant exhibits were admitted into evidence. Testimony was taken from the Applicant, his sponsor in Alcoholics Anonymous (AA), and his in-laws. A transcript of the hearing was received by this office on May 14, 1997.

FINDINGS OF FACT

After a thorough review of the evidence in the record, and upon due consideration of same, this Administrative Judge renders the following findings of fact:

Applicant is a 43 year old ----- who has worked for his current employer (company A), a defense contractor, since August 1973. He seeks to retain a Secret security clearance which was granted to him by the Defense Industrial

Security Clearance Office on May 21, 1976.

In the early/mid 1970's, Applicant experimented one time each with Valium, amphetamines and mescaline. After he commenced defense-related employment and was granted a Secret security clearance, Applicant started using marijuana. He enjoyed its relaxing effects and smoked the drug daily in 1978. Applicant continued to use marijuana at the rate of three or four joints a week throughout the 1980's and two joints weekly to every other week from about 1990 to summer of 1995. Applicant purchased marijuana for personal consumption weekly in 1978, once per month in the 1980's and on average once every other month from 1990 to 1995. Applicant on occasion reported to work under the influence of marijuana.

Circa 1980/81, Applicant began to snort cocaine in social occasions to be part of the group. Applicant understood that he was not supposed to use cocaine because he had a security clearance, but he liked the energetic effect of the drug and continued to inhale almost a gram per week roughly every other weekend. By about 1983, he was using cocaine every weekend and purchasing it for his own consumption from street vendors. Applicant refrained from cocaine use during the approximate period 1985 to 1987 after his spouse had a heart attack, only to resume use at the rate of every weekend, *i.e.* Fridays, Saturdays and Sundays plus an occasional Thursday. From about 1990, Applicant used crack cocaine which he smoked in a pipe, usually a "rock" of cocaine three times per week. In January 1995, he began to smoke five rocks of cocaine on each of the three weekend days. His cocaine habit cost him from \$100.00 to \$150.00 per week. Over the 1990 to January 1995 time frame, Applicant allowed his abuse to negatively impact his work in that he, on occasion, abused cocaine at lunchtime and failed to return to work. Unable to sleep because of his abuse of crack, Applicant also used all his allotted sick days at work to the point where his supervisor warned him that he was missing too much time. Applicant's abuse of cocaine caused him marital difficulties and his spouse had him taken off their joint checking account because he was using their assets to purchase cocaine. While he has never sold cocaine for profit, Applicant procured the drug for others.

On January 24, 1995, Applicant had himself admitted to a partial hospitalization program at a substance abuse treatment facility (treatment program B) where he was diagnosed as suffering from cocaine dependence and marijuana abuse. A therapeutic regimen of group therapy, relapse prevention groups and Alcoholics Anonymous (AA) was designed to educate Applicant about addiction and to assist him in identifying relapse triggers. Applicant went into treatment to keep people "off his back," and he did not fully commit to the program. He continued to have cravings for cocaine and relapsed into crack and marijuana abuse only two weeks into the program, testing positive for cocaine and cannabis on February 14, 1995. After twelve hospital visits, Applicant failed to return to treatment and no discharge plans were able to be formulated. He was discharged from the program on March 13, 1995, when he did not respond to a seven-day letter which was sent to him.

Applicant did not attend any outpatient 12-step program such as AA or Narcotics Anonymous (NA) and resumed weekend use of crack and smoking two joints of marijuana per week. He continued to experience lost time at work due to his abuse of crack cocaine and his supervisor informed him that his job was in jeopardy as a result. After splitting ten rocks of crack cocaine with a friend on June 8, 1995, Applicant on June 9, 1995, returned to treatment facility B where he was admitted on an inpatient basis for detoxification and treatment of cocaine dependence and marijuana abuse. During the course of hospitalization, he had an uncomplicated detox and minimal symptoms of withdrawal; he maintained a positive attitude on the unit and attended all groups and meetings. On June 19, 1995, he was discharged to the partial hospitalization program with plans to attend AA and NA daily.

Applicant received treatment in the partial hospitalization program until July 25, 1995, for cocaine dependence and history of polysubstance abuse. Applicant attended thirteen hospital visits and occasional AA meetings, completing the first two steps of the program. At discharge, his condition was noted as improved as he was able to maintain abstinence during the program.⁽²⁾ Aftercare recommendations included continued involvement with AA, obtain a sponsor, and to return to treatment facility B's aftercare group, both inpatient and outpatient. Applicant attended AA meetings in August 1995 but he did not obtain a sponsor.

Applicant remained abstinent until late August/early September 1995 when he relapsed into crack abuse. Over the next three weeks, he smoked four rocks of crack cocaine twice per week.

On September 26, 1995, Applicant executed a National Agency Questionnaire (NAQ), a Department of Defense form 398-2, on which he responded negatively to question 23. concerning illegal drug abuse and possession, question 24. involving drug purchase, manufacturing, trafficking, production, or sale, and question 25. inquiring into misuse of any prescription drugs. Applicant indicated he had received treatment for depression at treatment facility B for eleven days in July 1995, but he denied any illegal drug involvement or misuse of a prescription drug because he feared loss of his security clearance of fear that if he responded affirmatively.

On or about September 27, 1995, Applicant purchased fifteen rocks of crack at a cost of \$150.00 to \$160.00 with the intent of overdosing. After smoking the rocks in a motel from that Thursday, September 28, 1995 through Saturday, September 30, 1995, Applicant on October 1, 1995, sought inpatient admission to the adult chemical dependency unit at treatment facility B.⁽³⁾ Applicant underwent an uncomplicated detoxification for cocaine dependence, and was motivated throughout his stay. On October 9, 1995, he was discharged, condition stable and improved and with a fair prognosis, provided he remained committed to his individual outpatient sessions and AA/NA. Aftercare plans included consultation with a psychologist for individual therapy, daily AA/NA meetings, and attendance at treatment facility B's aftercare group on Wednesday evenings. Determined to abstain, Applicant saw the psychologist on an individual outpatient basis until May 1996.

In mid December 1995, Applicant relapsed in that he went out with a friend and purchased seven cocaine rocks for \$150.00 which he smoked with the friend.⁽⁴⁾

After this incident, Applicant resolved to maintain complete abstinence and he started attending AA on a daily basis. About a month into AA, Applicant began speaking at meetings. He eventually became involved in speaking at detoxification/rehabilitation centers and jails about his experience with illegal substances. Sometime in approximately late spring 1996, Applicant obtained a sponsor in AA and he has since worked hard in maintaining his sobriety. Applicant is working the step program and as of April 1997 was on step 4. His attendance at AA as of April 1997 is on the order of four to five meetings per week. Applicant intends to continue his affiliation with AA in the future.

On an unspecified date in March 1996, Applicant found some marijuana in a baggie in his residence. He disposed of it immediately and did not use any of the marijuana.

Sometime after he completed his September 26, 1995 NAQ, Applicant informed his AA sponsor that he had panicked and put down an answer on the form which was not true out of fear for his job. His sponsor advised him to be honest in subsequent inquiries. On May 2, 1996, Applicant was interviewed by a Special Agent of the Defense Investigative Service (DIS) in conjunction with his security clearance update background investigation. Applicant admitted that he lied on his security clearance questionnaire when he denied any illegal drug use or purchase as he was scared he could lose his job. As reflected in a signed, sworn statement executed by Applicant in conjunction with that interview, Applicant told the Agent that he had stopped using cocaine in October 1995 as he realized he had become an addict, that he had used marijuana for not quite one year in 1978, and that he had never used any other illicit substance. Applicant intentionally did not inform the Agent of his involvement with cocaine in December 1995, his continued abuse of marijuana to the summer of 1995, or his abuse in the past of Valium, amphetamines and mescaline.

On May 14, 1996, Applicant was reinterviewed by the same Agent. As reflected in a signed, sworn statement executed by Applicant on that date, Applicant told the Agent that he continued to smoke marijuana on almost a weekly basis from 1978 to summer 1995 to be sociable and because he enjoyed the drug's relaxing effects; that he used cocaine in the form of crack three times per week from 1992 to October 1995, purchasing the drug from various street vendors at a cost of \$160.00 to \$180.00; that he had a relapse in December 1995 in that he purchased some crack cocaine which turned out to be baking soda; that he experimented with Valium, amphetamines and mescaline one time each prior to his early 20's.

While cleaning out his automobile in June 1996, Applicant found some crack cocaine which he threw out. He did not use any of the cocaine.

On August 2, 1996, Applicant was interviewed a third time by the same DIS Special Agent about his alcohol and drug abuse. Applicant told the Agent on that occasion, as reflected in a signed, sworn statement prepared in conjunction with that interview, that he stopped all illicit drug use from 1985 to 1987 after his spouse had a heart attack. In an attempt to

minimize his illegal substance involvement and to make it appear that there was a period where he was abstinent, Applicant concealed the fact that he continued to use marijuana once or twice weekly during the 1985 to 1987 time frame.

In August 1996, in an effort to alleviate the pain of a toothache, Applicant on one occasion used Tylenol with codeine which had been prescribed for his spouse.

On September 23, 1996, Applicant was interviewed by another Special Agent in conjunction with a polygraph examination. Applicant executed a signed, sworn statement on that date "to correct [his] last statement to DIS because [he] said some things that were not true." Applicant then admitted that he had used marijuana during the 1985 to 1987 time period once or twice weekly; that during December 1995, about a week before Christmas, he bought seven crack cocaine rocks for \$150.00 which he used with a friend; and that he had since used some Tylenol with codeine which he got from his wife in August 1996 because a tooth was bothering him, even though he knew use of the drug was contrary to AA rules. He denied any other drug use since December 1995, but volunteered that he had some marijuana in his condo which he threw out in March 1996 and some crack cocaine which he kept in his car to June 1996 which he also disposed of without using any.

Applicant has been especially reliable at work during the last two years and he has consistently adhered to his security responsibilities on the job.

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the seriousness, recency, frequency and motivation for an applicant's conduct; the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the circumstances or consequences involved; the age of the applicant; the absence or presence of rehabilitation, the potential for coercion or duress, and the probability that the conduct will or will not recur in the future. *See* Directive 5220.6, Section F.3. and Enclosure 2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

DRUG INVOLVEMENT

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.

Drugs are defined as mood and behavior altering:

(a) drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens) and

(b) inhalants and other similar substances.

Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

Conditions that could raise a security concern and may be disqualifying include;

- (1) any drug abuse
- (2) illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution

Conditions that could mitigate security concerns include:

- (1) the drug involvement was not recent
- (2) the drug involvement was an isolated or infrequent event
- (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.

PERSONAL CONDUCT

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 also include:

- (2) the 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, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.
- (3) deliberately proving false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination.
- (5) a pattern of dishonesty or rule violations

Conditions that could mitigate security concerns include:

None.

CRIMINAL CONDUCT

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
- (2) a single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns include:

None.

* * *

Under the provisions of Executive Order 10865 and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the

trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the 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 is nonetheless security worthy. As noted by the United States Supreme Court in *Department of 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." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the Applicant.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility and demeanor of those who testified, this Judge concludes that the Government has established its case with regard to criteria H, E and J.

Applicant presents an extensive history of illicit drug involvement from the 1970's to as recently as August 1996, including experimentation with amphetamines, Valium and mescaline in the distant past, frequent and ongoing marijuana abuse from 1978 to summer 1995 while he was in possession of a security clearance, and the misuse of a prescription drug in August 1996. The extent to which illegal substances was a part of Applicant's life is most evident in his thirteen year habitual abuse of cocaine. A user of cocaine in powdered form about every weekend from the early 1980's, Applicant managed to refrain from cocaine abuse for about two years after his spouse had a heart attack in 1985 only to resume his use and purchase of cocaine two years later. In 1990, he commenced abuse of crack cocaine, which he purchased regularly from street vendors at considerable financial outlay. While he managed to restrict his cocaine abuse to weekends primarily, he developed a dependency on cocaine by January 1995. His abuse of crack cocaine adversely affected his attendance at work and caused him marital difficulties. With his job apparently on the line and his marriage as well, Applicant sought treatment on January 24, 1995, in treatment facility B's partial hospitalization program. Not committed to recovery at that time, he abused cocaine and marijuana while in the program and failed to complete the prescribed course of rehabilitation. His weekend abuse of crack cocaine continued throughout the spring and he experienced lost time at work to where his supervisor informed him his job was in jeopardy. To his credit, Applicant returned to treatment facility B where he entered the adult chemical dependency unit as an inpatient in June 1995. After ten days of uneventful detoxification and treatment, he was discharged to continue in the partial hospitalization program. In contrast to his prior experience, he was able to maintain abstinence for about two months before relapsing into crack abuse in late August/early September 1995. After smoking fifteen rocks of crack cocaine over the course of three days in late September 1995, Applicant sought readmission to the inpatient chemical dependency unit at facility B where he was treated for nine days. Despite his compliance with aftercare requirements, to include individual counseling with a psychologist, Applicant relapsed in December 1995 when he went out with a friend and purchased seven rocks of cocaine which he smoked with his companion. Then, after eight months of active participation in AA, Applicant misused a painkiller which had been prescribed for his spouse. Given the extent and duration of his marijuana and especially his cocaine abuse, Applicant bears a particularly heavy burden to demonstrate reform.

In assessing the security significance of Applicant's abuse of controlled dangerous substances, this Administrative Judge must consider the adjudicative guidelines pertaining to drug involvement set forth in Enclosure 2 to the Directive.

Disqualifying conditions (DC) 1. and 2., are clearly both apposite. Of the corresponding mitigating conditions (MC), MC 1 (drug involvement not recent) and MC 2 (drug involvement infrequent) apply to Applicant's amphetamine, Valium, and mescaline abuse as his involvement was limited to one-time experimentation and occurred more than twenty years ago. Favorable findings are warranted with respect to subparagraphs 1.l., 1.m., and 1.n. of the SOR.

Applicant's abuses of marijuana and cocaine are contrasted by their extent and duration. Moreover, although Applicant abused Tylenol with codeine only once, it engenders concern because he ingested it in August 1996 in knowing disregard of the AA tenets. His abuses of cocaine, to include crack, marijuana and the prescription drug Tylenol are potentially subject to mitigation where there is demonstrated intent not to abuse any drugs in the future (MC 3.) and satisfactory completion of a drug treatment program (MC 4.). By medical record account, Applicant did not demonstrate a sincere attitude toward recovery during his first partial hospitalization program and did not complete the prescribed therapeutic regimen. Applicant was motivated in his second rehabilitation effort over the June to July 1995 time frame. He attended all sessions during the inpatient and outpatient phases, but did not commit himself sufficiently to an aftercare support group following his discharge from the partial hospitalization program on July 25, 1995. On admission to his third rehabilitation effort in October 1995, he acknowledged to clinicians his lack of consistency and lack of follow through in recovery work. Applicant remained motivated through this treatment and was given a fair prognosis for recovery at discharge. Applicant continued in aftercare as required, to include individual therapy with a psychologist, and AA meetings.

Applicant's individual therapy and AA did not prevent his very serious relapse in December 1995, however. Applicant thereafter started speaking at AA meetings in December 1995, but did not obtain a sponsor until sometime in the spring of 1996. Applicant's AA sponsor testified to Applicant's dedication to his recovery and AA over the past year, although Applicant's abuse of the Tylenol with codeine in August 1996 casts doubt on the extent of his reform.⁽⁵⁾ His active speaking and step work in AA are demonstrative of his sincere intent not to use any illegal drug in the future. Yet, after consideration of the magnitude and recency of Applicant's drug problem (last abuse of cocaine in December 1995 and of a prescription drug in August 1996) it is too soon to tell whether Applicant's drug abuse is safely behind him.

Accordingly, subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g.,⁽⁶⁾ 1.i., 1.j., 1.k., 1.o., 1.p. and 1.q. are resolved against him.

With respect to the alleged sales of cocaine, there is evidence that he procured cocaine for others but he never sold it for profit. Subparagraph 1.h. is therefore concluded in his favor. The Government also alleged separately that Applicant possessed marijuana (1.r.) and crack cocaine (1.s.) from unspecified dates to arch 1996 and June 1996, respectively. Obviously, Applicant was in possession of both marijuana and cocaine on the occasions of usage and purchase, conduct which is the subject of other allegations. This Administrative Judge construes allegation 1.r. to refer to the apparent possession of marijuana by Applicant in his house in at least March 1996, after his last reported use. Similarly, subparagraph 1.s. is pertaining to Applicant's possession of cocaine in his car in at least June 1996, subsequent to his last reported involvement in December 1995. Applicant does not dispute that he found the drugs on both occasions, but submits that he had no knowledge that the marijuana remained in his house or the crack cocaine in his automobile. Given the absence of any proof that Applicant was aware that these substances remained in his possession, favorable findings are returned with respect to subparagraphs 1.r. and 1.s. of the SOR.

The concerns engendered by Applicant's serious drug abuse are compounded by his failure to be forthright about the extent of that abuse on his September 26, 1995 NAQ form, as well as in signed, sworn statements prepared during DIS interviews of May 2, 1996, May 14, 1996, and August 2, 1996. Applicant is found to have deliberately concealed significant drug involvement, as set forth in the Findings of Fact, in an effort to protect his job and his security clearance. At the time he executed his NAQ form in 1995 and denied any use and purchase of illegal drugs, his abuse of crack cocaine was current and only a few months had passed since his last marijuana use. Although he reported on May 2, 1996, that he had become addicted to cocaine, he did not reveal his abuse of cocaine in the form of crack, his purchase and abuse of crack cocaine in December 1995, and falsely stated that his use of marijuana was limited to 1978. When the Agent returned on May 14, 1996, Applicant corrected the record with respect to his marijuana abuse between 1978 and summer 1995. While he admitted purchasing a drug which he thought to be crack cocaine in December 1995, Applicant stated that the substance turned out to be baking soda. Given his subsequent admission on September 23, 1996, to abusing seven rocks of crack cocaine with a friend in December 1995, he is found to have made an untrue claim that it was only baking soda. Applicant did not correct the record concerning his December 1995 involvement

with crack during his third interview with the Agent on August 2, 1996, and falsely stated that he had stopped all drug use between 1985 and 1987. Information reflecting involvement with illegal substances has the potential for influencing an agency's investigative and adjudicative decisions. DCs 2. and 3. under the personal conduct adjudicative guidelines are thus pertinent in this case. Furthermore, his record of four intentional falsifications is enough to establish a pattern of dishonesty referred to in DC 5.

The Government alleges additional falsification, contending Applicant lied during his interview with the DIS polygraph examiner on September 23, 1996, by falsely denying any possession or use of an illegal drug since December 1995. Applicant denies any intentional falsification, and the only evidence tendered by the Government consists of Applicant's signed, sworn statement, dated September 23, 1996, in which he admits the abuse of Tylenol in August 1996 and his discoveries of marijuana in his condo in March 1996 and crack cocaine in his car in June 1996.⁽⁷⁾ The evidence of record supports a finding of candor rather than deliberate falsification. Subparagraph 2.f. is accordingly resolved in his favor.

With respect to his four instances of willful misrepresentation, the materiality and relevancy of the information concealed from the Government precludes favorable consideration of MC 1. Applicant cannot satisfy either the remoteness or isolation requirements of MC 2., as the deliberate falsification occurred repeatedly and as recently as August 2, 1996. His subsequent candor on September 23, 1996 to the DIS polygraph examiner Agent is to his credit, but it is not prompt to qualify for mitigation under MC 3. Nor is there any evidence that the intentional misrepresentations were caused by the improper advice of an authorized person. Although the Government is now aware of Applicant's illicit drug involvement, there is little assurance that he will not act similarly in his self-interest in the future if faced with a personally disadvantageous situation. At his hearing, Applicant was initially not candid with the Government about the extent of his marijuana abuse. In response to Department Counsel questioning concerning his last use of marijuana, Applicant testified, "Somewhere in the 80's, late 80's. I'm trying to remember if I had anything, I might have had it once somewhere in the '90s." (Transcript, p. 73). Furthermore, he not only continued to maintain that the substance he purchased in December 1995 was baking soda, but minimized his involvement on that occasion. Adverse findings are returned with respect to subparagraphs 2.a.(1), 2.a.(2), 2.a.(3), 2.b., 2.c., 2.d. and 2.e. of the SOR.

Whereas Applicant's criterion E conduct involved deliberate misrepresentations on documents presented to the Government, his conduct constitutes a felony violation of federal law pursuant to Title 18, Section 1001 of the United States Code.⁽⁸⁾ The adjudicative guidelines pertaining to criminal conduct apply to his repeated, deliberate falsification. DCs 1. (any criminal conduct) and 2. (a single serious crime or multiple lesser offenses) must also be considered in evaluating Applicant's current security worthiness.

Applicant satisfies none of the pertinent mitigating conditions. His repeated falsifications all occurred within the last two years. His criminal behavior was too recent and repeated for MCs 1. or 2., respectively. There is no evidence of undue pressure on Applicant which contributed to his rendering the false statements. While he laments his record of deliberate misrepresentations, as noted he attempted at the hearing to minimize the extent of his involvement, especially with marijuana. The Government can ill afford having individuals dictate for themselves the timing and extent of disclosure. Applicant's unblemished record with respect to handling classified information at work is viewed favorably, but it is not enough to overcome his criterion J conduct.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1. Criterion H: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: For the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: Against the Applicant

Subparagraph 1.k.: Against the Applicant

Subparagraph 1.l.: For the Applicant

Subparagraph 1.m.: For the Applicant

Subparagraph 1.n.: For the Applicant

Subparagraph 1.o.: Against the Applicant

Subparagraph 1.p.: Against the Applicant

Subparagraph 1.q.: Against the Applicant

Subparagraph 1.r.: For the Applicant

Subparagraph 1.s.: For the Applicant

Paragraph 2. Criterion E: AGAINST THE APPLICANT

Subparagraph 2.a.(1): Against the Applicant

Subparagraph 2.a.(2): Against the Applicant

Subparagraph 2.a.(3): Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against the Applicant

Subparagraph 2.d.: Against the Applicant

Subparagraph 2.e.: Against the Applicant

Subparagraph 2.f.: For the Applicant

Paragraph 3. Criterion J: AGAINST THE APPLICANT

Subparagraph 3.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.

Elizabeth M. Matchinski

Administrative Judge

1. Subparagraph 2.a. of the SOR was amended at the hearing to correct the date to September 26, 1995.
2. The discharge summary of his second treatment in the partial hospitalization program reflects a marked difference in Applicant's attitude in that he appeared to be in treatment for his own recovery, that he completed steps 1 and 2 with honesty, that he was helpful in group. (Exhibit 7). The discharge summary of his subsequent inpatient stay in October 1995 indicates that Applicant did not do well in the partial hospitalization program, canceling sessions and not being able to get into his feelings. (Exhibit 6). This assessment is more accurate of his first admission to the partial hospitalization program.
3. The evidence indicates Applicant left work during the day, went to a motel and used cocaine constantly until his admission.
4. On May 4, 1996, Applicant provided a signed, sworn statement to DIS in which he stated: "In Dec 95 I had a relapse and purchased what I thought was some crack cocaine, but it turned out to be baking soda." (Exhibit 4). In conjunction with a polygraph examination, Applicant on September 23, 1996, provided a signed, sworn statement in which he indicated:

I want to correct my last statement to DIS because I said some things that were not true. I said I had not used any illegal drug from about 1985 to 1987, but actually I had used marijuana during that period about once or twice weekly. Also during December 1995, about one week before Christmas, I bought seven crack cocaine rocks each about the size of a fingernail, for \$150. I smoked that with a friend. Crack cocaine makes me feel good and release my troubles. Since then the only drug I used illegally was some Tylenol with codeine that I got from my wife in August 1996.

Nowhere in that statement does Applicant indicate that the substance was baking soda. At his hearing, when asked initially about his purchase of cocaine in December 1995, Applicant testified:

I just went there. Some guy that I'd seen down there towards Christmas, and I really was buying it. He wanted something, and I wasn't going to, and I went and bought some anyways. That's what I did. I gave him that. I was going to give it to him. I tried that, and as soon as I tried it, it was gone. I just gave him the rest of it. I said no, this is--like a sign that I shouldn't be doing it. That's when I--as a matter of fact, that guy there, I dropped him off I forget where the hell it was, but I didn't care. And I says look, you got to get the hell--I'm off of this, and you got to go. And that was it. (Transcript, pp. 67-68).

In response to this Judge's questioning, Applicant later testified that he told the Agent that he went out with somebody he felt bad for and purchased two rocks of cocaine:

And I told him I says but the funny part was that we got ripped off for the two rocks because I went to smoke it, and--with my friend there, and my friend really smoked it. It doesn't matter. I tried it, and it was--we got ripped off. And I says I didn't do it. I didn't smoke the rest of it. My friend bought--my preferences weren't real good. And that's why I told him that I considered that a relapse, a letting down of my guard.

(Transcript, pp. 135-36). Asked in follow-up by Department Counsel why his sworn statement of September 23, 1996, failed to reflect his belief that the substance was not cocaine, Applicant indicated that he did not know why the Agent did not write that: "I told him I says it was baking soda and whatever else it was, but it wasn't cocaine. I told him the way it tasted and the way it smelled." (Transcript, pp. 135-36). Given Applicant's record of falsifications, his history of heavy cocaine abuse, and the context of Applicant's various statements (he indicated the substance was baking soda during an interview in which he was not completely forthright, the admission to crack cocaine abuse was to a polygraph examiner, and his recent claims of being ripped off come after issuance of the SOR, it is this Administrative Judge's finding that Applicant was being candid on September 23, 1996, when he admitted smoking seven rocks of cocaine with

a friend. Even assuming that the substance had been baking soda instead of cocaine, it would still viewed by this Administrative Judge as a relapse as Applicant's intent was to purchase and use crack cocaine.

5. Given Applicant's history of drug abuse, his involvement with prescription Tylenol, even to alleviate the pain of a toothache, is of concern for it reflects his willingness to go against the AA tenets.

6. Treatment, especially when in compliance with the therapeutic regimen, is viewed favorably. Adverse findings are nonetheless rendered with respect to subparagraphs 1.e., 1.f. and 1.g. because the programs were not successful in preventing further relapse.

7. In response to questioning from this Administrative Judge, Applicant testified the Agent had a problem with the polygraph: "He's saying you're saying this about that. And the only thing that could come out of that was that I took the Tylenol for the tooth problem." (Transcript, p. 133). The circumstances of the interview and polygraph are not clear enough in the record for this Administrative Judge to find that Applicant engaged in any intentional falsification. The Government did not present the testimony of the DIS Agent.

8. 18 U.S.C. §1001 provides in pertinent part: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up a . . .material fact. . .shall be fined not more than \$10,000 or imprisoned not more than five years, or both."