

DATE: July 10, 1997

In RE:

SSN: -----

Applicant for security clearance

ISCR Case No. 97-0069

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 January 24, 1997, 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, and amended by Change 3, February 13, 1996, 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 February 12, 1997.

Applicant elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the File of Relevant Material (FORM) on arch 13, 1997. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received a copy on March 24, 1997. Applicant's reply was received on March 25, 1997. The case was received by the undersigned for resolution on April 22, 1997.

FINDINGS OF FACT

The Following Findings of Fact are based on the documentation and testimony. The SOR alleges drug involvement (Criterion H), personal conduct (Criterion E), and alcohol abuse (Criterion J). Applicant admitted all the allegations (including the falsification allegations) with a few minor modifications. He noted that under subparagraph 1b, he used marijuana from 1975 to 1984, and, after a hiatus, he resumed marijuana use from January 1993 to January 1996. Under subparagraph 2d, Applicant's purchase of marijuana was from 1975 to 1984 when he stopped. He resumed purchasing marijuana in 1993. He stopped purchasing marijuana in January 1996. In his one page response to the FORM, Applicant

noted his his disciplinary layoff was without pay rather than with pay as incorrectly stated in the FORM (subparagraph 1n).

On March 7, 1990, Applicant intentionally omitted information about his drug history on a Personal Security Questionnaire (PSQ-DD Form 49) when he provided less than the complete picture regarding his use of marijuana. On the same form, he denied any purchases of marijuana. On February 14, 1995, Applicant intentionally did not provide the complete picture of his marijuana use. Also, on the same form, he falsely stated he had never purchased any drug.

Applicant used marijuana once every weekend between 1975 and 1976. He purchased the drug two or three times during the period. Between 1976 and 1980, Applicant used marijuana at the same frequency. When he started his employment after college, he increased his use to once or twice a week and on the weekends; he purchased the drug more frequently. When his child was born in 1984, the responsibilities of raising a child and the increased cost of marijuana convinced him to quit marijuana. In 1993, Applicant resumed marijuana use and smoked the drug daily. Occasionally, he reported to his employment under the influence of marijuana. Sometimes, when he smoked at lunch, he would not return to work in the afternoon. His increased marijuana use was due to low morale on the job as he had been placed in a position he was not qualified for. Also, his increased drug use resulted from an generally unstable job climate. Applicant estimated he spent about \$20 to \$25 on the drug weekly with his last use in January 1996.

Applicant began using cocaine by accident in September 1995 when his marijuana supplier misunderstood an order and delivered crack cocaine instead of marijuana. He liked the affect and became addicted through daily use. He was spending \$30 to \$50 a day, smoking all week and sometimes at lunch. Between September 1995 and the middle of January 1996, when he enrolled in inpatient treatment, Applicant spent between \$2000 and \$2500 from the family savings account on crack cocaine. He also took \$1000 from his credit card and his checking account to purchase the drug. After treatment, Applicant relapsed in June 1996 by spending approximately \$50 on the drug. He relapsed again in July 1996 and smoked the drug over a two-day period.

Applicant abused a prescribed medication once in January 1996 just before he was admitted for treatment.⁽¹⁾ He abused the medication along with other drugs during a spell of depression he experienced just before his admission. After completing treatment, Applicant attended outpatient treatment every two weeks for three months, and completed the outpatient treatment in June 1996. He continues to participate in Narcotics Anonymous (NA) with attendance four times a week to daily, and has accomplished a working understanding of almost the first five steps of the twelve step program. He consults with the employee assistance counselor once a week.

During his drug abuse between 1993 and his admission for treatment in January 1996, neither his family or his coworkers were aware of Applicant's drug abuse. Not even his treating doctor for other medical ailments, knew about Applicant's drug abuse.

Applicant used drugs after he was granted a security clearance on October 5, 1995. He received an eight week disciplinary, unpaid layoff beginning in October 1996 for falsifying and mischarging his time card. The layoff was due to his drug abuse between May 1995 and January 1996.

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:

Drug Involvement (Criterion H)

Factors Against Clearance:

1. any drug use.
2. illegal drug purchase....

Factors for Clearance:

none.

Personal Conduct (Criterion E)

Factors Against Clearance:

2. the deliberate omission...falsification of relevant and material facts from any personnel security questionnaire...to...determine...security clearance eligibility or trustworthiness....

Factors for Clearance:

none.

Criminal Conduct (Criterion J)

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 case 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 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, 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 repeat itself and Applicant presently

qualifies for a security clearance.

CONCLUSIONS

The Government has established a case of drug involvement as Applicant's overall drug use falls squarely within the ambit of Criterion H. Applicant abused marijuana on a periodic basis between 1975 and 1984. His abuse of marijuana became more frequent in 1993 when he encountered problems on the job. Applicant's marijuana use again increased when he started using crack cocaine in September 1995. Quickly, his use of crack rose to an addictive level as he used the drug daily and all week. His work-related problems included reporting to work under the influence of marijuana and/or crack on an occasional basis. Applicant received eight weeks unpaid layoff between October and December 1996, for falsifying his time card, which was due to his use of drugs. Finally, Applicant used drugs after receiving his security clearance in October 1995.

Applicant intentionally falsified his drug use in 1990 and February 1995. Because he provided no reason for omitting material information about his drug history, I conclude he did so because he was worried about keeping his job and/or his security clearance. His intentional falsifications fall within the scope of Criterion E because he deliberately omitted information from a personnel security questionnaire used to determine security clearance eligibility and trustworthiness.

The falsifications were not isolated events but occurred in four different locations on two security forms, and, at separate times, once in 1990 and once in 1995. There is no evidence Applicant made any prompt, good-faith efforts to correct the falsifications until he was confronted with the facts of his drug history and treatment. There is no evidence Applicant's concealment of relevant information occurred as a result of receiving improper or inadequate advice of authorized personnel.

Applicant's intentional misconduct under Criterion E also establishes criminal conduct (Criterion J) under 18 USC 1001, even though Applicant was not formally charged with violating the federal statute. Applicant's falsifications of material information, or information which the government should know about before making an important decision concerning an applicant's security suitability, were recent and not an isolated events. He did not come forward with the truth until he was faced with the facts of his treatment in January 1996.

Applicant's completion of inpatient treatment in February 1996 is positive evidence showing some good judgment in making a committed effort to free himself from the drug noose. His continued participation and completion of after care between March and June 1996, demonstrates even more favorable evidence that Applicant truly wants to put his drug use behind him. However, the period of recovery has not been long enough to justify complete confidence Applicant will not sink back into a pattern of drug use in the future.

FORMAL FINDINGS

After a review of the specific policy factors and the general policy factors (whole person concept) described in POLICIES, Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (Drug Involvement): 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. For the Applicant.

j. For the Applicant.

k. For the Applicant.

l. Against the Applicant.

m. Against the Applicant.

n. Against the Applicant.

Paragraph 2 (Personal Conduct): AGAINST THE APPLICANT.

a. Against the Applicant.

b. Against the Applicant.

c. Against the Applicant.

d. Against the Applicant.

Paragraph 3 (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 began inpatient treatment on January 19, 1996 and was discharged on February 16, 1996. The admitting and discharge diagnosis was drug dependence. Applicant's prognosis at discharge was guarded.