

DATE: June 16, 1997

In Re:

Applicant for Security Clearance

ISCR OSD Case No. 97-0072

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 12 February 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 3 March 1997, 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 25 March 1997; the record in this case closed 4 May 1997, the day the response was due at DOHA. The case was assigned to me on 2 June 1997. I received the case on 16 June 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 factual allegations of the SOR, except for denying any intent to use marijuana in the future (subparagraph 1.c.), and denying the conclusory allegations of paragraphs 1. and 2; accordingly, I incorporate the admissions as findings of fact.

Applicant--a 39-year old employee of a defense contractor--seeks access to classified information.

On 5 February 1995, Applicant falsified a Personnel Security Questionnaire (PSQ)(DD Form 398)(Item 4) when he answered "no" to questions designed to elicit his drug abuse history.⁽²⁾ During a subject interview on 17 July 1996, Applicant repeated his denials of any drug involvement, although he did explain the marijuana possession charge on the 1987 DWI (Item 5, 6).⁽³⁾ On 6 November 1996 (Item 7), Applicant acknowledged that he had not correctly reported his use of marijuana: Applicant first used marijuana at age 18 (1976) and until age 28 (1986) used marijuana an average of once or twice monthly. Since 1986, Applicant has used marijuana approximately twice yearly, most recently in August 1996.⁽⁴⁾ He stated an intent to continue to use marijuana at the same rate in the future.

In his Answer (Item 3), Applicant now claims that he used marijuana twice yearly--vice monthly--from 1976 to 1987, and only three times between 1987 and August 1996. He admits withholding information because of fear his company would find out.

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, or an expressed intent not to discontinue use, will normally result in an unfavorable determination.

Conditions that could mitigate security concerns include:

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

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.

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 twenty year history of drug abuse--in apparent disregard of the illegality of that drug abuse--raises serious doubts about his fitness for access to classified information. His Answer attempts to drastically revise his marijuana abuse history and greatly undercuts his credibility, both about the extent of his drug use and his now-stated intent to refrain from drug use in the future. Given the circumstances of his drug abuse over the years, I conclude Applicant is likely to use marijuana at social functions in the future. However, Applicant's plea to the drug charge in 1987 fails to establish that the marijuana belonged to Applicant, and I find paragraph 1.b. for Applicant. The balance of criterion H. I find against Applicant.

The Government has established its case under Criteria E. The information sought by the Government on the PSQ 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 was confronted with a second DIS interview suggests that he cannot be relied upon to speak the truth if the truth presents possible adverse consequences for his own interests. 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 before the second interview 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. (S)

FORMAL FINDINGS

Paragraph 1. Criterion H: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: For the Applicant

Subparagraph c: Against the Applicant

Paragraph 2. Criterion E: AGAINST THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: For 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. Although he also failed to disclose a 25 July 1981 DWI arrest and failed to disclose that his 17 May 1987 DWI arrest also involved marijuana possession charges, I find that neither omission is disqualifying under the Directive. The omission of the July 1981 DWI is consistent with Applicant's stated--but mistaken--belief that the Government only wanted arrests within the last ten years. Further, while he may have deliberately failed to disclose the drug connection to the May 1987 DWI arrest, that omission could not--as a matter of fact--affect the course of the Government's investigation. Applicant correctly, if not completely, disclosed the date, location, and nature of the offense. That disclosure was enough to ensure that the Government would discover whatever information was available to be discovered about that offense.
3. Applicant steadfastly maintains that the marijuana belonged to the passenger in Applicant's car; Applicant's plea to "operating with drugs in a motor vehicle" is not inconsistent with this claim.
4. Although Applicant admits misleading the DIS agent during this interview (Answer, 2.d.), his sworn statement (Item 7) contains no corroboration of this statement.
5. I find paragraph 2.a.(1) for Applicant because Applicant identified the pertinent details of the 1987 arrest which permitted DIS to investigate; Applicant's omission of the drug charge could not have affected DIS' action. I find paragraph 2.a.(2) for Applicant because Applicant mistakenly believed that DIS wanted only information from the last 10 years. I find paragraph 2.d. for Applicant because the Government's evidence does not conclusively establish either the fact of the misrepresentation (Applicant's statement conflicts with his answer) or that Applicant intended to mislead the agent (Applicant's answer states he had difficulty remembering his last marijuana use; Agent did not consider the discrepancy--if any--worth recording in the sworn statement.).