

Date : September 26, 1997

In RE:

SSN:

Applicant for security clearance

ISCR Case No. 97-0222

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

Appearances

FOR THE GOVERNMENT

Martin H. Mogul, Esquire

Department Counsel

FOR THE APPLICANT

Pro se

STATEMENT OF CASE

On March 20, 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, issued a Statement of Reasons (SOR) 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 interests of national security to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The SOR is attached.

Applicant filed an Answer to the SOR on or about May 21, 1997.

Applicant elected to have this case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on June 17, 1997. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received her copy on August 7, 1997, and submitted nothing in reply. The case was received by the undersigned for resolution on September 10, 1997. The issue raised here is whether the Applicant's admitted drug abuse militates against the granting of a security clearance.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, and the File of Relevant Material. The Applicant is 30 years of age, and is employed by a defense contractor who seeks a clearance on her behalf.

Criterion H - Drug involvement

1.a. and 1.b. The Applicant used methamphetamine (crystal), from about June of 1985 until at least October 31, 1995. She "started using it recreationally," however, "[b]y 87, . . . [she] was using crystal daily, about 1/4 gram per day. . . . [She] was purchasing weekly, paying about \$80 for 1/16 gram. This pattern continued through Oct 95" (Government Exhibit (GX) 5 at page 3).

1.c. The Applicant was arrested in June of 1988, and subsequently pled guilty to Driving Under the Influence of Alcohol. She admits that she "also may have had some crystal meth in . . . [her] system" (GX 5 at page 1).

1.d. The Applicant was again arrested in March of 1990, and subsequently pled guilty to being Under the Influence of a Controlled Substance, to wit: Methamphetamine (GX 5 at pages 1~2, and GX 7).

1.e. The Applicant was arrested a third time on October 31, 1995, and subsequently pled guilty to being Under the Influence of a Controlled Substance, which she admits was "crystal" (GX 5 at page 2, and GX 6).

1.f. The Applicant received treatment on February 22, 1996, and again on March 11, 1996, for a condition diagnosed as chemical addiction, specifically, to crystal methamphetamine (GX 3 at page 1, and GX 5 at page 4).

1.g. The Applicant also used marijuana "less than five times . . . between about 90 to early 93" (GX 5 at page 3).

Mitigation

In her Answer, the Applicant avers that she continues to attend Narcotics Anonymous, and intends no future drug abuse (GX 3 at pages 1~2).

POLICIES

Enclosure 2 and Section F.3. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. The conditions should be followed in every case according to the pertinent criterion, however, the conditions are neither 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 clearance case presents its own unique facts and circumstances, it should not be assumed that these conditions exhaust the realm of human experience, or apply equally in every case. Conditions most pertinent to evaluation of this case are:

Drug Involvement

Conditions that could raise a security concern:

- (1) any drug abuse (drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction);
- (2) illegal drug possession, . . . purchase

Conditions that could mitigate security concerns:

- (3) a demonstrated intent not to abuse any drugs in the future;

As set forth in the Directive, "[each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature and seriousness of the conduct and surrounding circumstances.
- b. Frequency and recency of the conduct.

- c. Age of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must make out a prima facie case under Criterion H (drug involvement) 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 her ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, 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 be repeated, and that the Applicant presently qualifies for a security clearance.

The improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places. If an applicant has demonstrated a lack of respect for the law in her private affairs, then there exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

CONCLUSIONS

The Applicant's methamphetamine abuse spans a period of more than ten years, and culminated with her addiction to the drug. Her extensive abuse is also evidenced by three drug related convictions, and her last usage was only 20 months ago (the date of the Government's FORM ends the time line used for adjudication purposes in this case). It now appears that the Applicant intends no future drug abuse, however, it is too soon to say that her fairly recent addictive usage is not of present security significance.

Considering all the evidence, the Applicant has not rebutted the Government's prima facie case regarding her drug involvement. The Applicant has thus not met the mitigating conditions of Criterion H, and of Section F.3. of the Directive. Accordingly, she has not met her ultimate burden of persuasion under Criterion H.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1:

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.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge