

DATE: July 21, 1997

In RE:

Applicant for security clearance

ISCR Case No. 97-0204

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 March 19, 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, 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 April 9, 1997.⁽¹⁾

The case was received by the undersigned on April 30, 1997. A notice of hearing was issued on May 16, 1997, and the case was heard on May 20, 1997. The Government and Applicant submitted documentary evidence. Testimony was taken from Applicant and 1 witness. The transcript was received on May 29, 1997.

RULINGS ON PROCEDURE

Applicant's four post-hearing submissions are marked and admitted in evidence as Applicant's Exhibit A.⁽²⁾

FINDINGS OF FACT

The Following Findings of Fact are based on the documentation and testimony. The SOR alleges drug abuse (Criterion H), personal conduct (Criterion E), and criminal conduct (Criterion E). I have reviewed the transcript, evaluated witness credibility and examined the exhibits.

Applicant is 32 years old and employed as a technician by a defense contractor. He seeks a secret clearance.

On June 22, 1993, Applicant provided false information to question 20a of the National Agency Questionnaire (DD-Form 398-2).⁽³⁾ On June 23, 1995, Applicant answered "no" to the drug use and drug purchase questions on his security form.

On November 22, 1996 (GE #3), and November 26, 1996 (GE #4), Applicant provided a full account of his drug history. He did not disclose his drug history on the earlier security questionnaires because he thought he was going to stop all drug use, and he did not believe it was necessary to reveal his drug use. Also, he had successfully concealed his drug use until his treatment in August 1996. Applicant used drugs for the first time in 1981 when he experimented with marijuana with peers. He used the drug again in 1990 with peers. His next contact with drugs occurred in the late summer of 1994 when he and his friends used crack cocaine.⁽⁴⁾ He used the drug every two weeks for the next 6 weeks before stopping. He resumed crack use in April 1995 and continued to use the drug every two weeks. He paid \$300 to \$500 for the drug and used it from Friday night through Saturday night until November 1995 when he stopped to spend more time with his family during the holidays. In January 1996, Applicant developed complications from surgery and quit drugs and alcohol until April 1996. From April until August 17, 1996, Applicant's use of crack became more frequently as he was using a substantial part of his paycheck to purchase the drug, and was using the drug from Friday night to Sunday. His last two purchases cost him approximately \$700.

Applicant tried to stop using crack on a couple of occasions but finally turned to his employee assistance counselor and was directed to the treatment program in August 1996. Applicant attended three hours of treatment a week for seven weeks. The treatment structure was primarily group therapy with one individual session.⁽⁵⁾ The biggest benefit Applicant received from therapy was the courage to inform his family he had been using drugs. (TR. 17) On completion of therapy, Applicant continued with Alcoholics Anonymous (AA) four times a week. He severed all connections with his former drug using friends.

Applicant's drug abuse caused at least one garnishment (GE #6), two delinquent medical bills and educational loans.

On September 6, 1996, Applicant voluntarily told his employer's security officer that he was participating in treatment.

The associate director of security has known Applicant on the job for eight years. Applicant has always displayed good security practices and has helped to prevent several security infractions. The associate director recommends Applicant for a position of trust because of his honesty.

Applicant's minister complimented Applicant for his valuable support in the youth ministry for the last 10 months. Applicant has devoted himself unselfishly to the youth ministry objectives, including the confirmation class and providing other activities for younger people from age 18 through age 30. (TR. 19-20)

The district attorney has been a life-long friend of Applicant and lauds Applicant's involvement in youth programs.

The principal therapist verified Applicant's participation in outpatient treatment from September through October 24, 1996. Applicant was unable to complete the 30 week after care program because of the long distance. The after care meeting also conflicted with Applicant's youth group activities. Applicant has attained a strong support network through AA and religious fellowship. (TR. 24)

Mr. B, Applicant's second line supervisor, has known Applicant for nine years. Applicant is one of the best technicians, in addition to being a highly motivated individual. Applicant has never had a problem with attendance at work.

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 possession,...purchase....

Factors for Clearance:

None.

Personal Conduct (Criterion E)

Factors Against Clearance:

2. the deliberate omission, concealment, or 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 evidence of 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 drug involvement (Criterion H), personal conduct (Criterion E) and criminal conduct (Criterion J). Applicant's marijuana use is no longer a concern of the Government because he used the drug experimentally in 1981 and never purchased the drug. Applicant's crack cocaine abuse, on the other hand, remains a clear security concern because of the recency of use and the large expenditures by Applicant to purchase the drug. Applicant first used the drug every two weeks for six weeks in the late Summer of 1994. He resumed using crack every two weeks from April 1995 until November 1995, when he quit to spend more time with his family during the holidays. He was spending \$300 to \$500 and smoked the drug from Friday night to Saturday night. In April 1996, Applicant started using crack again and increased his intake by using the drug from Friday night to Sunday. Before he quit crack altogether on August 17, 1996, Applicant spent approximately \$700 on one occasion to obtain a supply of the drug.

Since the crack use did not end until August 1996, mitigating factor #1 cannot apply independently to mitigate the drug abuse. Although Applicant's crack use was probably less than two years long, if the periods of non-use are deleted from the periods of use, the amount of use was extensive because Applicant used the drug repeatedly from Friday to Saturday night or Sunday morning. While there is no evidence of drug use affecting his job, his drug use was so serious that he became delinquent on several bills and also received a garnishment.

Applicant's seven week attendance and completion of outpatient treatment, his participation in AA and his valuable contribution to the youth activities of his church, establish encouraging reasons to believe Applicant may stay on course to remain drug free in the future. However, because only nine months has passed since Applicant stopped using crack and other drugs, I am unable to declare with complete confidence, Applicant's past drug use will not fall into drug abuse in the future.

In addition, Applicant attempted to deceive the Government on two occasions about his drug use. In June 1993, Applicant had the option of telling the Government about his drug use, even though the drug use was minimal at the time. Had Applicant not falsified information a second time in June 1995, the passage of time may have mitigated the June 1993 falsification. In June 1995, Applicant was presented with the same option as he had faced in June 1993. The only difference in June 1995 was that Applicant was actively using crack cocaine. Unfortunately, Applicant chose to provide false information rather than tell the truth.

A person's history of drug use is clearly pertinent to a determination of judgment, trustworthiness and reliability because drug use is against government as well as defense contractor policy. Also, drug use is against the law. The fact that Applicant disclosed his drug use to his security officer in September 1996, constitutes some evidence of Applicant's good judgment in taking constructive action to stop his drug involvement. However, he did not reveal his drug history to anyone from the Government until November 1996 when he was confronted with information about his drug treatment. He admitted a successful effort to conceal all drug use until his treatment in August 1996. (GE #4)

The fact Applicant finally came forward with the truth about his drug use, does not excuse or eliminate the legal consequences of the earlier falsifications. An applicant for security clearance has an obligation to provide honest information during all phases of the investigation.

The intentional falsifications under Criterion E also represent criminal conduct under 18 USC 1001 as Applicant falsified material information on two security forms. The information is material because of the likelihood the information to influence a decision concerning Applicant's security suitability. The mitigating factors under criminal conduct have been considered but do not apply because the most recent falsification was less than 2 years ago, and, a pattern of conduct was created by Applicant's second attempt to give the Government the impression he had never used

drugs. Applicant's evidence of successful rehabilitation since the end of August 1996, particularly the long distance traveled by Applicant every week to complete his seven week rehabilitation, and his positive contributions to the youth of his church as well as the community, has been carefully weighed. But, given the extensive crack cocaine abuse, particularly during the Summer of 1996 when Applicant spent up to \$700 for the drug, and the intentional falsifications in 1993 and June 1995, Applicant's favorable character evidence and his job performance is not sufficient to overcome the evidence introduced under Criterion H, E and J.

FORMAL FINDINGS

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

Paragraph 1 (Drug Involvement): AGAINST THE APPLICANT.

- a. Against the Applicant (from late summer 1994 to August 1996).
- b. Against the Applicant (from late summer 1994 to August 1996).
- c. Against the Applicant.
- d. For the Applicant.
- e. For the Applicant.
- f. Against the Applicant.

Paragraph 2 (Personal Conduct): AGAINST THE APPLICANT.

- a. Against the Applicant.
 - b. Against the Applicant.
- (2) crack cocaine use from the late Summer of 1994 to August 1996.
- (3) crack cocaine purchase from the late Summer of 1994 to August 1996.

Paragraph 3 (Criminal Conduct): AGAINST THE APPLICANT.

- 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.

Paul J. Mason

Administrative Judge

1. Applicant provided two Answers to the SOR. The first Answer, dated April 9, 1997, appears on a copy of the SOR with a line drawn through all of Applicant's handwritten responses to each allegation. The second Answer, dated April 9, 1997, is typewritten and contains more detailed information relating to each allegation. I shall consider both Answers in the Findings of Fact.

2. On June 2, 1997, the Government indicated they have no objection to the four character references.

3. Question 20a requires an applicant to answer "yes" or "no" to whether he has ever used any kind of drug, even on an experimental or one-time basis.
4. Because there is no evidence in the documentation or Applicant's testimony of crack use before the late Summer of 1994, I find Applicant did not start using and purchasing the drug until the Summer of 1994.
5. Applicant began using crack cocaine while he was trying to help his former girlfriend quit. (TR. 18)