

Date : August 15, 1997

In RE:

SSN:

Applicant for security clearance

ISCR Case No. 97-0264

**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 April 11, 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 the 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.

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\*The Applicant's first name is (Transcript (TR) at page 78 lines 1~7).

Applicant filed an Answer to the SOR on May 1, 1997.

The case was received by the undersigned on June 26, 1997. A notice of hearing was issued on July 2, 1997, and the case was heard on July 31, 1997. The Government submitted documentary evidence, and called one witness to testify. Testimony was taken from the Applicant. The transcript was received on August 11, 1997. The issues raised here are whether the Applicant's drug involvement and alcohol consumption militate against the granting of a security clearance.

**FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 37 years of age, has two years of a college education, and is employed by a defense contractor as an electronics technician. He currently has no security clearance, but his employer seeks a secret security clearance on behalf of the Applicant.

Criterion H - Drug Involvement

1.a.~1.c. and 1.x. The Applicant used **marijuana**, with varying frequency, from about May of 1974 to about January of 1988, and then, again, from about January of 1995 until September 10, 1996. Twice in 1977, he laced his marijuana with PCP (TR at page 39 lines 9~16). "In the early '80s and through the mid '80s, . . . [he used marijuana] once or twice a month" (TR at page 15 lines 12~16). From 1986 through 1987, his frequency of usage increased "to two to three times a week" (TR at page 15 lines 17~20). After seven years of absolutely no drug abuse, the Applicant began to use marijuana in 1995. At first this usage was "once every couple of weeks" until August, when it increased to "two to three times a week up until about November of '95" (TR at page 16 lines 3~9). His usage then tapered off to "once a week" through to September 10, 1996 (TR at page 16 lines 10~18).

During both periods of his usage, the Applicant purchased marijuana on numerous occasions (TR at page 16 line 25 to page 19 line 6). He also sold marijuana for profit in 1996. The Applicant estimates that he sold a total of two ounces of marijuana for \$300. His purchase price was \$150 (TR at page 17 line 7 to page 20 line 13).

1.d~1.f. The Applicant used **methamphetamine**, with varying frequency, from about February of 1981 to about December of 1987, and then, again, from about January of 1996 until August 31, 1996. In 1987, he began to use the drug "approximately twice a month [in April] and progressed to pretty much nearly a daily use by the end of 1987" (TR at page 21 lines 3~24). In 1996, his usage was about twice a month in January and February, once a week in March through ay, and by August the Applicant was using methamphetamine on a daily basis (TR at page 21 line 25 to page 22 line 18).

The Applicant purchased methamphetamine, on numerous occasions, during the periods of his usage (TR at page 23 line 19 to page 25 line 1). In 1996, he also sold the drug (TR at page 25 lines 2~14).

1.g. and 1.h. The Applicant used **cocaine**, with varying frequency, from about July of 1983 to about December of 1987, and then, again, from about December of 1995 until August 31, 1996. During the summer of 1987, he was using cocaine once a week (TR at page 26 lines 12~15). During the second period of his usage, from December of 1995 through January of 1996, the Applicant "was using it at least once a week" (TR at page 27 lines 6~13). From February until his last usage in August, he only used cocaine three times (TR at page 27 lines 14~20). The Applicant purchased cocaine a total of four times (TR at page 28 lines 1~17).

1.h.~1.j. The Applicant used **LSD**, with varying frequency, from about December of 1977 to about June of 1983, and then, again, in August of 1996. During the first period of his usage, he used the drug about 20 times (TR at page 28 lines 18~23). He also used LSD twice in August of 1996 (TR at page 29 lines 9~12). The Applicant purchased the drug on numerous occasions (TR at page 29 line 19 to page 30 line 14), and sold LSD "two or three times" during March and April of 1978 (TR at page 30 line 15 to page 31 line 5).

1.l. The Applicant does not remember ever using mescaline (TR at page 31 line 9 to page 33 line 3).

1.m. and 1.n. The Applicant used the **prescription drugs SOMA and Elavil**, an estimated "five or six times" for each drug. Neither drug was prescribed for the Applicant (TR at page 33 lines 4~16, and page 34 lines 2~15).

1.o.~1.q. and 1.cc. The Applicant used **psilocybin mushrooms**, with varying frequency, from about 1983 to about August of 1985 (TR at page 43 line 20 to page 35 line 2). In January of 1984, he was also arrested for burglary, and for criminal mischief (Government Exhibit (GX) 5). The Applicant had used psilocybin mushrooms prior to this arrest (TR at page 41 lines 6~16). He also purchased this "hallucinogen" on three occasions, and sold this drug once (TR at page 35 line 3 to page 36 line 2, and page 36 lines 6~13).

1.r.~1.t. The Applicant used **hashish/hashish oil**, with varying frequency, in 1981 (TR at page 36 lines 3~5 and 14~19). He also purchased hashish once, and sold it "once or twice" (TR at page 37 lines 1~6, and 12~20).

1.u.~1.w. The Applicant used **Quaaludes** "a few times" in 1981~82 (TR at page 37 line 21 to page 38 line 2). He purchased this drug "three times," and sold it once (TR at page 38 lines 11~19, and page 38 line 20 to page 39 line 8).

1.y.~1.aa. The Applicant used **amphetamine**, "two or three times a week," during April and ay of 1987 (TR at page 39

line 24 to page 40 line 4). He purchased amphetamine "twice," and has also sold the drug (TR at page 40 lines 8~22).

1.bb. The Applicant used illegal drugs while in the U.S. Marine Corps, which resulted in several Non-Judicial Punishments, and to his untimely release from the Corps with an Other than Honorable Discharge in **1983** (TR at page 40 line 23 to page 41 line 5).

1.ff. The Applicant was arrested in **May of 1983**, in part, for Possession of Less than an ounce of marijuana (TR at page 45 lines 11~18).

1.dd. The Applicant was arrested on four occasions from **August to November of 1986** for Fourth Degree Assault against his cohabitant. He was "high," in part, on methamphetamine and/or marijuana at the time of these arrests (TR at page 41 line 23 to page 42 line 24).

1.ee. The Applicant received inpatient treatment from **December 31, 1987 to January 5, 1988**, for a condition diagnosed, in part, as Methamphetamine Addiction and Substance Abuse. On January 5th, he was transferred to a Recovery Center for further inpatient treatment. The Applicant remained at this Center until **February 16, 1988**, and was diagnosed, in part, as suffering from Chemical Dependency, mainly Methamphetamine and Marijuana (TR at page 43 line 1 to page 45 line 10).

1.hh. The Applicant also received inpatient treatment from **May 16~22, 1996**, for a condition diagnosed, in part, as Substance Dependence, marijuana and methamphetamine (TR at page 50 line 2 to page 51 line 6, and GX 7).

1.gg. The Applicant received further treatment from **May 22, 1996 to July 10, 1996**, for a condition diagnosed, in part, as Substance Abuse and Dependence (marijuana, amphetamines) (TR at page 47 line 17 to page 49 to line 23, and GX 8).

1.ii. and 1.jj. The Applicant tested positive for methamphetamine in **June of 1996**, at his place of employment. He was also terminated in **July of 1996**, because of attendance problems related to his use of illegal drugs (TR at page 51 line 25 to page 54 line 21).

1.kk. The Applicant last received inpatient treatment from **September 10, 1996, to October 8, 1996**, for a condition diagnosed, in part, as Methamphetamine Dependence and Cannabis Dependence (TR at page 54 line 22 to page 55 line 21, and GX 6).

1.ll. The Applicant continued to use marijuana, methamphetamine, cocaine, LSD, and psilocybin mushrooms, while holding a Secret security clearance from September of 1977 to June of 1983 (TR at page 55 line 22 to page 58 line 1).

### Criterion G - Alcohol Consumption

2.a. The Applicant consumed alcohol, at times to excess and to the point on intoxication, from about 1973 to December of 1987, and from about November of 1995 until he last consumed alcohol in August of 1996 (TR at page 60 line 17 to page 62 line 15). During the most recent period of his abuse, his alcohol consumption progressed from "twice a month to twice a week" (TR at page 65 lines 17~25). During this period, the Applicant avers that he was only intoxicated once, that being in June of 1996, after drinking "a half a fifth" of whiskey (TR at page 66 lines 7~19).

2.b. In January of 1984, he was arrested for burglary, and for criminal mischief (GX 5). The Applicant had consumed alcohol prior to this arrest (TR at page 41 lines 6~16).

2.c. The Applicant was arrested on four occasions from August to November of 1986 for Fourth Degree Assault against his cohabitant. He was "high," in part, on alcohol at the time of these arrests (TR at page 41 line 23 to page 42 line 24).

2.d. The Applicant received inpatient treatment from December 31, 1987 to January 5, 1988, for a condition diagnosed, in part, as Alcoholism. On January 5th, he was transferred to a Recovery Center for further inpatient treatment. The Applicant remained at this Center until February 16, 1988, and was diagnosed, in part, as suffering from Chemical Dependency, mainly alcohol (TR at page 43 line 1 to page 45 line 10, and at page 63 lines 5~16).

2.d. The Applicant was arrested in May of 1983, in part, for Driving Under the Influence (TR at page 45 lines 11~18).

2.f. The Applicant received further treatment from May 22, 1996 to July 10, 1996, for a condition diagnosed, in part, as Substance Abuse and Dependence, Alcohol (TR at page 47 line 17 to page 49 to line 23, and GX 8).

2.g. The Applicant was **not** terminated from his employment in July of 1996, as a result of his alcohol abuse (TR at page 64 line 17 to page 65 line 7).

2.h. The Applicant last received inpatient treatment from September 10, 1996, to October 8, 1996, for a condition diagnosed, in part, as Alcohol Dependence (TR at page 54 line 22 to page 55 line 21, at page 65 lines 8~11, and GX 6).

### Mitigation

The Applicant is attending Narcotics Anonymous on a regular basis (TR at page 67 line 11 to page 68 line 15, and page 69 line 15 to page 71 line 3). He is also committed to a life of sobriety (TR at page 73 lines 15~21).

Considering all of the evidence, and in light of the fact that the Applicant's extensive drug and alcohol abuse; the Applicant bears a heavy burden of persuasion in demonstrating his suitability for security clearance access.

### 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, sale . . . .

##### Conditions that could mitigate security concerns:

- (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.

#### Alcohol Consumption

##### Conditions that could raise a security concern:

- (1) alcohol-related incidents away from work, such as driving while under the influence, fighting . . . or other criminal incidents related to alcohol use;
- (3) diagnosis by a credentialed medical professional of alcohol abuse or alcohol dependence;
- (5) consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program.

Condition that could mitigate security concerns:

(3) positive changes in behavior supportive of sobriety;

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), and criterion G (alcohol consumption); 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, 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.

Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness. 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 his private affairs, then there exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

### CONCLUSIONS

Considering first the Applicant's extensive past drug abuse, his most recent period of admitted extensive abuse spans a period of nearly two years. It culminated with his diagnosed addiction to both methamphetamine and cannabis in September of 1996, less than a year ago. This was also the third time the Applicant was diagnosed as suffering from some form of chemical dependency. The first time was in December of 1987, and the next time in May of 1996. It is also noteworthy that despite nearly seven years of being "clean and sober" from January of 1988 to January of 1995, the Applicant reverted to his past dependency (TR at page 46 lines 11~17). Although it now appears that the Applicant intends no future drug abuse, it is too soon to say that his fairly recent addiction is not of present security significance.

Much the same can be said of the Applicant's past alcohol abuse. He was most recently diagnosed in September of 1996 as suffering from Alcohol Dependence. Although it now appears he is on the road to sobriety, it is again too soon to say

his fairly recent dependency is not of present security significance.

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

### **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.
- h. Against the Applicant.
- i. Against the Applicant.
- j. Against the Applicant.
- k. Against the Applicant.
- l. For the Applicant.
- m. Against the Applicant.
- n. Against the Applicant.
- o. Against the Applicant.
- p. Against the Applicant.
- q. Against the Applicant.
- r. Against the Applicant.
- s. Against the Applicant.
- t. Against the Applicant.
- u. Against the Applicant.
- v. Against the Applicant.

- w. Against the Applicant.
- x. Against the Applicant.
- y. Against the Applicant.
- z. Against the Applicant.
- aa. Against the Applicant.
- bb. Against the Applicant.
- cc. Against the Applicant.
- dd. Against the Applicant.
- ee. Against the Applicant.
- ff. Against the Applicant.
- gg. Against the Applicant.
- hh. Against the Applicant.
- ii. Against the Applicant.
- jj. Against the Applicant.
- kk. Against the Applicant.
- ll. Against the Applicant.

Paragraph 2:

**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. For the Applicant.
- h. 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