

DATE: September 5, 1997

In Re:

Applicant for Security Clearance

ISCR Case No. 97-0348

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR THE GOVERNMENT

William S. Fields, Esquire

Department Counsel

FOR THE APPLICANT

Pro se

STATEMENT OF THE CASE

On 14 May 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 4 June 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 30 June 1997; the record in this case closed 9 August 1997, the day the response was due at DOHA. The case was assigned to me on 15 August 1997; I received the case on 18 August 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 allegations of the SOR; accordingly I incorporate the admissions as findings of fact.

Applicant--a 25-year old employee of a defense contractor--seeks a secret clearance.

On 22 January 1993, the U.S. Secret Service arrested Applicant for his activity with a counterfeiting ring that culminated in the undercover purchase of \$30,000.00 in counterfeit U.S. currency, and the death of the ringleader in a shootout with the arresting officers.⁽²⁾ On 3 February 1993, Applicant was indicted for his part in the conspiracy; he later pleaded guilty to uttering counterfeit obligations and aiding and abetting. On 6 August 1993, Applicant was sentenced to one year incarceration and awarded probation for two years.⁽³⁾ Applicant spent approximately eight months in a federal intensive confinement center (six months in a "boot camp" program), and six months in a halfway house (April-September 1994). He successfully completed supervised probation in September 1996.

At the time of his arrest in January 1993, Applicant gave a sworn statement to the Secret Service detailing his

involvement with the counterfeiting ring (Item 6). He later gave a statement to the DIS (Item 5) minimizing his involvement with the counterfeiters. I find the former statement more credible than the latter both because it is more consistent with other information contained in the ----- records and because it is more consistent with Applicant's acknowledged actions.⁽⁴⁾ In approximately October 1992, Applicant met a named individual who was the ringleader of a group of people counterfeiting checks, credit cards, and U.S. currency. In November or December 1992, the ringleader asked Applicant to rent a storage facility to store equipment used to counterfeit checks. Although Applicant was aware of the ringleader's counterfeiting activities, Applicant rented the storage unit in his name and allowed the ringleader to use it. On two occasions Applicant helped the ringleader copy U.S. currency; once he served only as lookout--Applicant was the sole late shift worker at a 24-hour photocopy center--but once he served as lookout and showed the ringleader how to use the copier to ensure that the front and back images were properly aligned. For his help, the ringleader paid Applicant \$200.00.

On 22 January 1993, Applicant served as lookout for the ringleader for what was to have been the sale of the counterfeit bills to another criminal. Instead, the buyer turned out to be an undercover Secret Service agent. Applicant observed back-up police units arriving for the sting operation and fled the scene, but not before firing his gun as the prearranged warning to the ringleader that the police had arrived. Applicant attempted to hide his car and his gun, but was still arrested by the Secret Service later that day. Applicant expected to be paid \$200.00 for serving as lookout.

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:

CRIMINAL CONDUCT (CRITERION J)

A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Conditions that could raise a security concern and may be disqualifying include:

- (1) any criminal conduct, regardless of whether the person was formally charged;
- (2) a single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns include:

- (2) the crime was an isolated incident.

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 J. Applicant was actively involved in a conspiracy to counterfeit U.S. currency. Contrary to his sworn statement to the DIS which attempts to paint his involvement in a more benign fashion, the record reflects key support for the criminal enterprise provided by Applicant: fronting for a storage unit for the counterfeiting equipment, serving as lookout both while bills were being copied and on the fateful--and fatal--day the bills were to have been sold, and providing technical guidance to the ringleader to ensure that the front and back images aligned properly. Applicant's comparatively heavy sentence reflects the court's judgment of the seriousness of Applicant's criminal conduct. I have considered the fact that Applicant was 21 years old when he committed the crime, that Applicant has completed probation, and that the crime was isolated. However, the record contains no substantial evidence of Applicant's rehabilitation or other evidence to suggest he possesses the judgment, reliability, and trustworthiness required of those with access to classified information. Further, there is no evidence to suggest that Applicant's involvement in the criminal conspiracy was a dramatic departure from his normal character, or that he was an innocent dupe of the ringleader. I find Criterion J. against Applicant.

FORMAL FINDINGS

Paragraph 1. Criterion J: AGAINST THE APPLICANT

Subparagraph 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.

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. Applicant was not directly involved in the shootout. He was posted as lookout for what he believed was the counterfeiter's sale of the bogus bills, and fled the scene--unaware of the ringleader's death--when the police arrived.
3. Applicant's sentence was among the more severe given the conspirators involved in the case.
4. For example, Applicant's statement to the DIS claims that although he did not know the last name of the ringleader or suspect him of illegal activity, he later rented a storage facility for this person in Applicant's name. Applicant's statement to the Secret Service that he knew the ringleader's full name, knew about the ringleader's counterfeiting activities, and rented the security facility in Applicant's name to keep counterfeiting equipment from being discovered, is more consistent with the independently established facts that Applicant rented the storage facility in his own name and it was found to have counterfeiting equipment in it at the time of Applicant's arrest.