

DATE: February 6, 1998

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0459

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Matthew E. Malone, Esq., Department Counsel

FOR APPLICANT

Pro se

STATEMENT OF THE CASE

On July 2, 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 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. Applicant filed his Answer to the SOR on July 23, 1997.

The case was received by the undersigned on September 2, 1997. A notice of hearing was scheduled on September 16, 1997, and the case was heard on October 7, 1997. The Government submitted documentary evidence. Testimony was taken from Applicant. The transcript was received on October 22, 1997.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The SOR alleges drug involvement (Criterion H), personal conduct (Criterion E), and criminal conduct (Criterion J). Applicant's admissions to all factual allegations, except for 1 g, shall be incorporated in the following Findings of Fact.

Applicant is 36 years old and employed as an electronics technician by a defense contractor. He seeks a secret level clearance.

Applicant's first use of marijuana occurred in 1976 or 1977. The next time he used marijuana was in 1994 while he was drinking. He was drinking more due to financial and family problems. He believed he needed something extra, and resumed using marijuana during the evening after work and on the weekends. He spent about \$20.00 a month on marijuana from 1994 to March 1997. He stopped purchasing and using marijuana in March 1997, and stated "...but I have not stopped using marijuana and most likely [will] use marijuana in the future." (GE-4)

Applicant was arrested on December 22, 1994, for: (1) possession of Cannabis, (2) open liquor, (3) no insurance, and (4) one headlight. The charges were dropped with leave authorized to reinstate. Applicant admitted to possessing marijuana at the time of his arrest. On February 1, 1995, Applicant was arrested for: (1) possession of Cannabis, (2) transporting open liquor, (3) headlight violation, and (4) seatbelt violation. Applicant pleaded guilty and was ordered to attend drug school.⁽¹⁾ After his successful completion of drug school, the charges were dropped. Applicant admitted possessing marijuana when he was arrested. On February 7, 1995, Applicant was arrested for: (1) possession of marijuana. The charge was stricken from the record with leave to refile. Applicant admitted having marijuana in his possession when he was arrested.

On September 9, 1991, Applicant falsified a National Agency Questionnaire (DD Form 398-2) when he answered "no" to question 20a, asking him whether he had ever used or possessed drugs.⁽²⁾

On December 17, 1996, Applicant answered affirmatively question 24 of Security Clearance Application (Standard Form 86), that he had been charged or convicted of an offense related to drugs or alcohol, but furnished only information concerning his March 1995 arrest (SOR-1e). He did not supply information regarding his arrests in December 1994 (SOR-1c) and February 1, 1995 (SOR-1d).

Also, on December 17, 1996, Applicant falsified the same application at question 27 when he answered "no" to whether he had ever used drugs in the past seven years or since the age of 16, whichever is shorter. Applicant also provided false information to question 28, when he answered "no" to the question whether he had ever used a controlled substance while possession a security clearance.

Applicant's credibility is undermined by his intentional falsifications of drug use on two security forms in September 1991 and December 1996. Those falsifications raise significant concerns about whether Applicant really stopped using marijuana in June 1997, and about Applicant's claims he does not have an ongoing problem with marijuana, even though the marital difficulties/pressures and extra-marital affairs may have ended.

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 abuse;
2. illegal drug possession, purchase
3. failure to successfully complete s drug treatment program prescribed by a credentialed medical professional. Current drug involvement, especially following the granting of a security clearance, or an expressed intent not to discontinue use, will normally result in an unfavorable determination.

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....

Criminal Conduct (Criterion J)Factors for Clearance:

1. any criminal conduct, regardless of whether the person was formally charged.

Factors Against 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 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 drug involvement (Criterion H, personal conduct (Criterion E), and criminal conduct (Criterion J) 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 the 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 repeat itself and Applicant presently qualifies for a security clearance.

CONCLUSIONS

The Government has presented a clear case of drug involvement within the scope of Criterion H. While there is no evidence of marijuana use between 1976 and 1994, there is evidence of regular abuse on a daily basis between 1994 and March 1997. In addition, there is evidence of Applicant's purchase of marijuana on a periodic basis between 1994 and March 1997. Significantly, Applicant indicated in April 1997 (GE-4) he would likely use marijuana in the future.

Applicant's drug abuse was recent because Applicant admitted using the drug as late as June 1997. While his use in June 1997 may be considered isolated, he used the marijuana daily between 1994 and arch 1997 when his alcohol use was not producing the desired effect. Applicant testified that he has no problem with marijuana at the present time but I am not

convinced because : (1) Applicant has presented no independent evidence to support his claim that marijuana does not present a problem; (2) Applicant has used marijuana while holding a security clearance; (3) Applicant has lied about his marijuana use on two security forms; and, (4) Applicant stated in April 1997 (GE-4) he would likely use marijuana in future.

Applicant's intentional falsifications of material and relevant information on September 1991 and December 1996, constitute adverse conduct under Criterion E. Applicant's drug history is material because drug use is incompatible with holding a security clearance and also contrary to the criminal laws of society. The Government has a legitimate right to know about adverse information in order to make an informed decision concerning an applicant's security suitability.

An applicant's drug history is clearly pertinent to a security decision about his judgment, trustworthiness and reliability. An example of poor judgment is using any kind of drug while holding a security clearance. An example of poor judgment is also attempting to conceal material information during a security investigation when the applicant believes it is in his best interest to lie rather than tell the truth about his past.

Applicant's willful omission of his drug history also represents a violation of the criminal law as defined by 18 USC 1001, which prohibits false statements about material matters. As noted in the discussion under Criterion E, an applicant's drug history is material to the Government's background investigation into an applicant's security suitability.

Applicant's marijuana abuse is serious because he used marijuana on a daily basis for about three years and lied about his drug use on 2 security forms. Applicant was approximately 32 or 33 years old, and well beyond the age of adulthood, when he began using marijuana daily. While Applicant maintains he has beaten the marijuana use, there is no independent evidence in the record to corroborate his claim. Lastly, the fact that Applicant officially admitted he would likely use marijuana in the future demonstrates to me that he has not completely overcome his marijuana use. In view of the regular marijuana use until March 1997, the use of any kind of drug while holding a security clearance for more than 10 years, and the falsifications relating to his marijuana use, Applicant has failed to meet his ultimate burden of demonstrating he warrants a security clearance at the present time.

FORMAL FINDINGS

Having weighed the specific policy factors with the general policy factors (whole-person concept), Formal Findings required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1 (**drug involvement**): 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.

Paragraph 2 (**personal conduct**): AGAINST THE APPLICANT.

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.

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. He attended three, two hour drug classes on the weekends. (GE-4)
2. Applicant knew his answers to the drug use questions on the security forms questions were false (Tr. 17), but he lied about his drug use because he was worried about losing his security clearance. (Tr. 23)