

DATE: March 17, 1998

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0597

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On August 29, 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 national interest 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 October 20, 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 February 6, 1998. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received his copy on February 11, 1998, and submitted nothing in reply. The case was received by the undersigned for resolution on March 16, 1998. The issue raised here is whether the Applicant's admitted drug involvement 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 37 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant.

Criterion H - Drug Involvement

1.a.~1.c. The Applicant used marijuana, with varying frequency, "once to twice weekly," from about 1975 until his last

usage in 1980 (Government Exhibit (GX) 5 at page 1). He also purchased the drug on numerous occasions during the period of his usage, and "grew a couple of marijuana plants for . . . [his] personal use in the 1970's" (GX 5 at page 6).

1.d.~1.f. The Applicant used cocaine, with varying frequency, from about 1975 until he entered the U.S. Air Force in June of 1981, and again from July of 1982, when he left the Air Force, until his last usage in 1986 (GX 4 at page 6, and GX 5 at pages 1~2). "From 1975 to 1980, . . . [he typically] snorted between 1/4 gram and one gram over the course of a weekend" (GX 5 at page 1). In April of 1980, the Applicant was arrested for Possession of a Controlled Substance, Cocaine (GX 5 at page 7). He, in fact, had cocaine in his possession (GX 5 at page 7). After leaving the Air Force in 1982, the Applicant returned to his cocaine abuse, and his usage increased up to 1983, which he describes in the following terms: "More and more commonly I was snorting a gram of cocaine over a weekend, not just 1/4 gram. Eventually, it became a gram during the course of an evening" (GX 5 at page 2). However, "[b]etween 1983 and 1986 there were also rare occasions when . . . [he] used cocaine during the week" (GX 5 at page 2). During the periods of his usage, the Applicant also purchased cocaine on numerous occasions, spending as much as \$300 for the drug (GX 5 at page 6).

1.g.~1.j. The Applicant used methamphetamine, with varying frequency and to the point of dependency, from 1986 until his last usage in December of 1995 (GX 5 at pages 1 and 2, and GX 6 at page 10). He describes his usage in the 1990's in the following terms: "By 1990 my use of speed had increased to daily or almost daily. I was snorting 1/4 to 1/2 gram a day during the work week and a gram over the weekend from 1990 to 1994. By this time I had become physically and psychologically dependent on speed" (GX 5 at page 3). In November of 1990, he was arrested for possession of the drug, and he also purchased it on numerous occasions during the period of his usage (GX 5 at page 6 and 7). From December 15, 1995, to January 5, 1996, the Applicant was treated for a condition diagnosed as Amphetamine Dependency (GX 6 at page 10).

Mitigation

The Applicant avers in his unsworn answer to the SOR that he has been drug free for over two years, is in a recovery program at his church, and intends no future drug involvement (*see also* GX 5 at pages 5~6).

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, including cultivation . . . purchase

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.

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 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.

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

The Applicant abused a number of illegal substances over a period of about 20 years. This abuse ended with his physical and psychological dependency on Amphetamine in December of 1995. Although it now appears that the Applicant is on the road to recovery, I am not convinced that his fairly recent dependency will not recur in the future, I must therefore conclude that the Applicant's fairly recent drug abuse is of present security significance.

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

h. Against the Applicant.

i. Against the Applicant.

j. 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