

DATE: February 19, 1998

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0580

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

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, as amended by Change 3, issued a Statement of Reasons (SOR), dated August 21, 1997, 1997, to the Applicant that detailed 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 conduct proceedings and determine whether clearance should be granted, denied or revoked. In his September 9, 1997 response to the SOR, Applicant requested a hearing before a DOHA Administrative Judge.

In response to the specific allegations, Applicant denied SOR 1.a. and admitted SOR 1.b., 1.c., 1.d., and 1.e. On October 29, 1997, Department Counsel submitted a Motion To Amend The Statement Of Reasons, to add a paragraph 2, alleging, under Criterion E, that Applicant falsified his responses to Questions 24.a. and 24.b. of his October 24, 1996 Questionnaire for National Security Positions (SF 86), by denying any use of marijuana , cocaine, or crystal methamphetamine. In his November 13, 1997 response, Applicant did not object to the Motion To Amend the SOR and admitted the newly alleged falsification of the SF 86. [\(u\)](#)

A copy of the SOR and Amended Statement of Reasons are attached to this decision and are included herein by reference.

A Notice of Hearing was issued on January 9, 1998, scheduling the hearing for January 29, 1998, on which date the hearing was conducted. Applicant testified and called one other witness. Appellant submitted 11 exhibits (A-F) that were admitted into evidence. The Government questioned Applicant as part of its case but did not call any other witnesses. Seven Government exhibits were admitted into evidence. I received the transcript on February 3, 1998.

FINDINGS OF FACT

After a thorough review of all of the evidence in this case, including Applicant's responses to the SOR, and upon due consideration of all of the evidence in the case record, this Administrative Judge makes the following findings of fact as to the Criterion G (Alcohol Consumption) and Criterion E (Personal Conduct) allegations in the SOR:

- Applicant is 40-years-old and has been employed by a major defense contractor since 1987. He is currently employed as a production operations analyst and has had a Confidential-level security clearance since December 1993 (GX 5 and Tr at 70).
- Applicant consumed alcohol, at times to excess and to the point of intoxication, from about 1970 to at least February 1997.
- Applicant was arrested on September 29, 1993, in state A, for (Count 1) Driving under the influence of alcohol or drugs (DUIA/D); (Count 2) Driving with a blood alcohol content of .08% or above; and (Count 3) Failure to wear a seatbelt. Applicant pleaded guilty to Count (2). He was sentenced to serve 180 days in jail, suspended, to pay fines and costs of \$1,185, to participate for five days in a Public Service Program, to complete a First Conviction Driver Program, and was awarded three years probation. At the time of his arrest, Applicant had a blood alcohol content of .24%. On June 7, 1995, a warrant was issued for Applicant's arrest because of his violation of the terms of probation. He was sentenced to serve two days in jail and his probation was revoked. As of February 26, 1997, this warrant was still outstanding but has since been withdrawn.
- Applicant was arrested on September 4, 1994, in the same city in state A, and charged with (Count 1) DUIA/D, second offense; and (Count 2) Driving with a blood alcohol level of .08% or above, second offense. Applicant pleaded guilty to Count 2 and Count 1 was dismissed. Applicant was sentenced to serve ten days in jail, to pay fines and costs of approximately \$1,230, to participate in a 28-day residential rehabilitation program, and to attend a Driving under the influence program.
- Applicant received treatment from January 23, 1995 to February 20, 1995, at a facility in state B, where his employer had its headquarters. Applicant's condition was diagnosed, in part, as Alcohol Dependence.
- Applicant continued to consume alcohol, notwithstanding his treatment for Alcohol Dependence in January and February 1995.
- Applicant knowingly falsified his answers to Questions 24.a. (any use of a controlled substance within the previous 7 years) and 24 b (any use ever of a controlled substance while holding a security clearance), by answering "No" to each question, while he knew and intentionally omitted that he had: (SOR 2.a.(1) used marijuana from 1970 to 1995; (SOR 2.a.(2) used cocaine from approximately 1975 to at least November 1994; and (SOR 2.a.(3) used crystal methamphetamine from approximately the summer of 1992 to at least the summer of 1994.

POLICIES

General Policy Factors (Whole Person Concept)

The adjudication process established by DOD Directive 5220.6 is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the seriousness, recency, frequency and motivation for an Applicant's conduct; the circumstances or consequences involved; the age of the Applicant; the presence or absence of rehabilitation; the potential for coercion or duress; and the probability that the conduct will or will not recur in the future. (Directive 5220.6, Section F.3., as expanded in Enclosure 2, at page 2-1). I have considered and assessed each of the above factors in my overall evaluation of Applicant's security clearance suitability and conclude that none of them, individually or collectively, warrants a finding favorable to Applicant's suitability for security clearance.

Each security clearance case presents its own facts and circumstances. It should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Even though adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of poor judgment, irresponsibility or emotionally unstable behavior.

Specific Criterion Factors

In addition to the General Guidance discussed above, an Administrative Judge must also evaluate the evidence under the specific Additional Procedural Guidance found at Enclosure 2 of the Directive (in this case, Criteria G and E). Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Alcohol Consumption (Criteria G)

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

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

- (1) alcohol-related incidents away from work, such as driving under the influence . . . or other incidents related to alcohol use; and
- (3) diagnosis by a credentialed medical professional of alcohol abuse or alcohol dependence;

Conditions that could mitigate security concerns include:

- (1) successfully completed an alcohol awareness program following two or less alcohol-related incidents and has significantly reduced alcohol consumption, and made positive changes in life-style and improvement in job reliability.

Personal Conduct (Criterion E)

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

- (2) the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . determine security clearance or trustworthiness . . . ;
- (4) personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation, or pressure; and

Conditions that could mitigate security concerns include:

None

In addition, under the provisions of Executive Order 10865 and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required by the Directive, the Administrative Judge can only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

A person who seeks access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. When the 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." As I understand the Court's rationale, doubts are to be resolved against the Applicant.

An Applicant's admission of the information in a specific allegation relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the

Government has the initial burden of proving those controverted facts alleged in the Statement of Reason. I note in this case that Applicant, in his response *and* at the hearing, admitted *all* of the SOR allegations⁽²⁾ Once the Government meets its initial burden of proof (by an Applicant's admissions and/or by other evidence) and establishes conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within a specific criterion in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the credibility of Applicant's testimony, I conclude that the Government has established its case as to all SOR Criteria G and E allegations. I also find there is a nexus or connection between the proven allegations and Applicant's eligibility for security clearance, since security clearance worthiness is a twenty-four-hour a day requirement. The question remains whether Applicant has adequately mitigated or extenuated the impact of the Government's case.

Applicant does not deny his consumption of alcohol during the period from 1970 to 1997, as alleged in SOR 1.a., but he contends that his excessive use of alcohol, to the degree that it caused specific problems in his life, occurred only during the period surrounding his 1993 and 1994 alcohol-related arrests (SOR 1.b. and 1.c.). Applicant's alcohol use and the reasons therefore, are discussed in Applicant's June 1994 and February 1997 Sworn statement to the Defense Investigative Service (DIS)⁽³⁾ (Government Exhibits (GX) 3 and 5 and his 1995 treatment records (GX 4). The two alcohol-related arrests, in 1994 and 1995 are cited in his October 1996 Questionnaire for Security Clearance Positions (GX 5).

The observation by the medical professional who prepared the discharge summary contained in GX 4 was that Applicant "shared how his marital problems had escalated over the past few years, along with his alcoholic drinking." The intimate details provided by Applicant during his treatment indicate considerable openness about his problems. Likewise, his February 1997 sworn statement provides details about the personal and financial stresses he had endured as a result of the failure of his marriage, a process not yet complete at the time of the sworn statement (GX 6).

Applicant's earlier statements were substantially repeated and added to at the January 28, 1998 hearing. Applicant discussed his history of alcohol consumption and placed his last use of alcohol as the Sunday prior to the hearing, two beers while watching the Super Bowl on TV. Applicant estimated his alcohol consumption during 1997 as about ten times during the year and no more than two to three beers on each occasion (Tr at 30). The numbers for 1995 and 1996 are about the same (Tr at 31). Since his 1995 treatment, he has consumed alcohol to the point of intoxication only once, when he consumed about 10 beers in his home, in about October 1996 (Tr at 31).

During 1993 and 1994, the years of his arrests, he drank to excess considerable more often, about two to three days a week on the average (Tr at 33), and on an estimated 30% of the time during this period, he drank to the point of intoxication about once a month (Tr at 34). As a result of his first arrest, he attended and completed a three month conviction program at a local university (Tr at 38). The second arrest, in 1994, was apparently combined with the first arrest, for which Applicant was still on probation, so that the sentences ran concurrently (Tr at 39, 40).

After his 1993 arrest, he attended an alcohol awareness program, during which three month period, he stopped drinking completely (Tr at 43). He then began drinking again, about three weeks after completion of the program. He does not recall being advised by the program staff not to consume alcohol at all (Id.). In September 1994, he was arrested the second time, after consuming about two beers at the beach and six beers at a bar (Tr at 44, 45).

After this second arrest, Applicant contacted the Employment Assistance Program at his company and was referred to a treatment center, where he received care in January and February 1995. Applicant's discharge diagnosis was (1). Alcohol dependence and (2) Cannabis and Amphetamine abuse (GX 4). In the Discharge Summary, it was advised that Applicant "remain. . . sober and abstinent and attend. . . 12-step meetings. (Id). Applicant remembers that he was advised that "the best thing would be to abstain from alcohol," but if alcohol was to remain apart of his life, "to take a look at what you're doing before you involve alcohol in your life (Tr at 50). A month after his discharge, Applicant

began drinking beer again and has continued to do so, while also attending Alcoholics Anonymous meetings (Tr at 52).

Applicant also attended a court-directed "multiple-conviction" program for 16 months, from March 1995 to October 1996 (Tr at 53). Applicant's recollection is that he was not required to be abstinent but "not to drink or use any drugs prior to coming" to the meetings (Tr at 54). Although he believes he has "alcoholic tendencies," he apparently does not consider himself an alcoholic and thinks he would stop drinking altogether, only if it were a "matter of life or death" (Tr at 57).

At present, his intentions as to consuming alcohol are basically that while he doesn't "have a plan to drink every day," he expects to drink occasionally at home (Tr at 80, 81).

Applicant's use of marijuana began in about 1970, the same point in his life that he began consuming alcohol. His last use was the night before he entered the treatment center in January 1995 (as indicated above, he was treated for both alcohol and marijuana/cocaine abuse) (Tr at 63, 64). Applicant admits that he used marijuana while holding a security clearance *and* Air Force "special program accesses" (Tr at 65) and concedes there weren't any "good explanations" (Id.).

Applicant's use of crystal methamphetamine was limited to about four occasions from 1992 to the summer of 1994., when he shared some with friends. His cocaine use extended from 1975 to 1994, with only a few uses after "the end of 1992" (Tr at 67). Applicant's use of a variety of other drugs (first admitted in GX 7) was limited in scale and all such use ended by 1980 (Tr at 67, 68).

The record evidence indicates that Applicant's marijuana use ended about three years ago and the use of cocaine and crystal methamphetamine even earlier. Considering this evidence as to its "recency," I conclude that marijuana use three years ago, after 25 years of use, and repeated denials of such use, is "recent" in terms of its effect on security clearance suitability.

Likewise, I consider cocaine use that lasted 19 years and ended in November 1994 to be "recent" and the use of crystal methamphetamine on a few occasions from 1992 to mid-1994, to be minimally recent, if at all. Recency, however, is only one factor indicating rehabilitation. Logically, the underlying issue is rehabilitation; i.e., whether an Applicant can be relied upon not to use drugs in the future. In this context, while lack of evidence of more recent use is certainly a positive factor, an individual who establishes his unreliability and untrustworthiness by lying about his drug use is not entitled to have his claims of an intent not to use drugs in the future be accepted at face value.

For these reasons, Applicant's falsification of his SF 86 in October 1996 is particularly troubling. Second only to actual violations of rules governing the care of classified material, falsifications of security clearance applications go directly to the heart of the security clearance process. When Applicant answered "No" to Questions 24.a. and 24.b., he knew that the answers should have been "Yes" (Tr at 71, 72). His testimony admitting having lied was preceded by similar admissions in his July 1997 sworn statement to DIS (GX 7), wherein Applicant admitted having lied on "all of [his] past security clearance questionnaires [and in his earlier sworn statements to DIS] concerning the question of illegal drug use."

Applicant's rationale for the repeated lies was basically that he "did not want to jeopardize [his] employment" (GX 7 and Tr at 72, 73). In summary, he had lied from the beginning and he was "being consistent on what [he] had answered on the questionnaire, correct" (Tr at 73, 75, 78). He did not want to hurt his chances of retaining his clearance (Tr at 75, 76). I also find it noteworthy that Applicant did not reveal his drug use (*see* GX7) until the DIS agent began asking questions that indicated to Applicant that DIS had information about such use, presumably from the treatment records on which use had been discussed by Applicant (GX 4). Thus, the weight to Applicant's admissions as to drug use is reduced by the fact that Applicant was acting in response to perceived pressure and not because of a change in outlook on his past.

I have carefully considered Applicant's testimony about the difficulties of his past life and his problems with alcohol (Tr at 83-91). I have also considered all of Applicant's exhibits. Of particular interest in my evaluation of Applicant's present suitability for security clearance are his exhibits AX B (I do not consider the matter of the warrant to be a negative factor); AX C (Applicant completed his community service); AX C (Applicant's payment of child support is a positive factor); AX E (Applicant's involvement in the Alcoholism program is a positive factor); AX F (Applicant

successfully completed an individualized treatment program in February 1995. This is a positive factor); AX I, J, and K (favorable comments on Applicant job performance and accomplishments).

In summary, the record evidence clearly establishes that each of the allegations in the SOR is correct and that all of the Disqualifying Factors cited above are applicable. As to whether any of the allegations have been adequately mitigated or extenuated, I find that Applicant has not carried his burden as to any of the Alcohol-related allegations in paragraph 1. He continues to drink and intends to do so in the future; His 1993 and 1994 DUIs are now three and a half and four and a half years back, respectively, and his 1995 treatment for alcohol dependence and drug abuse is now three years in the past but viewed in the context of his subsequent conduct; i.e., consuming alcohol after being advised not to do so, and continuing to lie about his drug use until confronted, does not provide a substantial level of confidence in Applicant's integrity and ability to keep his word.

His falsifications of his security clearance questionnaire on October 24, 1996 and the falsification of information provided to DIS as recently as July 1997, brings the period of Applicant's demonstrated poor judgment, unreliability, and untrustworthiness too close to the present to establish his present suitability for access to the nation's secrets. At present, the negative weight of the history and pattern of Applicant's misconduct is not outweighed by any demonstrated evidence of mitigation or extenuation. At the very least, more time and a greater effort in demonstrating rehabilitation is required before the Government can have the required level of confidence in Applicant's ability to protect the nation's secrets.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1. Criterion G Against the Applicant

Subparagraph 1.a Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Paragraph 2. Criterion E Against the Applicant

Subparagraph 2.a.(1) Against the Applicant

Subparagraph 2.a.(2) Against the Applicant

Subparagraph 2.a.(3) 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.

BARRY M. SAX

Administrative Judge

1. Applicant's response to the new Criterion E allegations is an admission of 2.a. and 2.b. There is no mention of allegation 2.c. At the hearing, Applicant clarified that he meant to admit all three of the new allegations (Tr at 9-11).

2. Applicant testified that his response denying SOR 1.a, was meant to deny only that he always drank to excess and to the point of intoxication. He admitted that he had done so on occasion (Tr at). His response to the amended SOR contains express admitted admissions of SOR 2.a. and 2.b., but he testified that he misunderstood the numbering of the new allegations and that he had intended to admit all three allegations, 2.a.-2.c. (Tr at).

3. In late 1997, DIS was redesignated the Defense Security Service (DSS).