

DATE: March 5, 1998

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 97-0594

**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 September 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 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.

Applicant filed an Answer to the SOR on September 27, 1997.

The case was received by the undersigned on January 8, 1998. A notice of hearing was issued on January 12, 1998, and the case was heard on February 6, 1998. The Government submitted documentary evidence. Testimony was also taken from the Applicant. The transcript was received on March 3, 1998. The issues raised here are whether the Applicant's past drug involvement, personal conduct, and related criminal conduct 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, the documents and the live testimony. The Applicant is 26 years of age, has a vocational technical degree, and is employed by a defense contractor as a radio frequency/microwave technician. He currently has a secret security clearance, and his employer seeks retention of this level clearance on behalf of the Applicant.

**Criterion H - Drug Involvement**

1.a.~1.f. The Applicant used marijuana on two occasions during the time frame from 1989~1993 (Transcript (TR) at page 42 line 7 to page 43 line 1, at page 60 lines 18~21, and at page 61 line 11 to page 62 line 23; *see also* Government Exhibit (GX) 3 at page 3). The Applicant has never purchased the drug, nor does he intend to use it in the future (TR at page 43 lines 2~10). The Applicant also used cocaine on one occasion during the time frame of 1989~1993 (TR at page 62 line 24 to page 63 line 11).

In July of 1992, the Applicant was arrested, in part, for possession of cocaine (TR at page 37 line 15 to page 41 line 2, GX 3 at pages 1~2, and GX 4). He knowingly possessed this drug; and as a result of this possession, he was, in part, awarded a diversion program with 24 months of probation (TR at page 40 line 5 to page 41 line 2, GX 3 at page 2, and GX 4).

#### Criterion E - Personal Conduct

2.a.~2.c. In answering question 27 on his July 1996 Security Clearance Application, the Applicant knowingly and wilfully failed to disclose any of his past drug involvement as noted in Paragraph 1 of the SOR (TR at page 44 line 11 to page 45 line 6, at page 58 lines 7~22, GX 1 at page 13, GX 6 at page 7, and GX 3 at page 3).

The Applicant relied on information supplied to him by his employer on their employment application form (Applicant's Exhibit (AppX) A at page 3); and as a result, he improperly responded to questions 21 and 24 on his July 1996 Security Clearance Application (GX 6 at page 6). I find that these improper responses were not knowing and wilful falsifications on the part of the Applicant. The Applicant's sworn statement of January 29, 1997, was also a true statement (GX 3).

#### Criterion J - Criminal Conduct

3.a. & 3.b. The Applicant's knowing possession of cocaine on July 1, 1992, a possession for which he was arrested, constituted criminal conduct. The Applicant also violated the provisions of 18 U.S.C. Section 1001, when he failed to disclose any of his past drug involvement on his July 1996 Security Clearance Application.

#### Mitigation

The Applicant's drug involvement appears to have been isolated, infrequent, and not recent.

Considering all of the evidence, and in light of the fact that the Applicant was less than candid about his drug involvement, 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 . . . .

Conditions that could mitigate security concerns:

- (1) the drug involvement was not recent;
- (2) the drug involvement was an isolated or infrequent event;

Personal Conduct

Condition that could raise a security concern:

- (2) the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . . or similar form used to conduct investigations . . . .

Conditions that could mitigate security concerns:

None.

Criminal Conduct

Condition that could raise a security concern:

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

Conditions that could mitigate security concerns:

None.

As set forth in the Directive, "[e]ach 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 Criteria H (drug involvement), E (personal conduct), and J (criminal conduct); 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. Personal conduct is conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations; and criminal conduct also creates doubt about a person's judgment, reliability and trustworthiness. 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 past drug involvement, it was clearly isolated and infrequent, and ceased over four years ago. I therefore conclude that the Applicant's past drug involvement is **not** of present security significance. He has thus mitigated the Government's security concerns as to this Criterion.

The same can not be said, however, as to the falsification that is alleged under personal conduct, and the related criminal conduct. I conclude that they **are of present security significance**. The Applicant was less than candid with the Government about his past drug involvement on his July 1996 Security Clearance Application, SOR subparagraph 2.b. (GX 6 at page 7). Furthermore, he waited fully six months to correct this falsehood when he executed his January 29, 1997, sworn statement (GX 3). I also conclude that this falsehood is violative of 18 U.S.C. Section 1001, and of present security significance, SOR subparagraph 3.b..

Considering all the evidence, the Applicant has not rebutted the Government's prima facie case regarding his personal conduct and related criminal conduct. The Applicant has thus not met the mitigating conditions of Criteria E and J, and of Section F.3. of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Criteria E and J.

## **FORMAL FINDINGS**

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

### Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.
- f. For the Applicant.

### Paragraph 2: AGAINST THE APPLICANT

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

### Paragraph 3: AGAINST THE APPLICANT

- a. For the Applicant.

b. 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