

DATE: March 24, 1998

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0772

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

William S. Fields, Esquire, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On 24 November 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 15 December 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 20 January 1998; the record in this case closed 27 February 1998, the day the response was due at DOHA. The case was assigned to me on 18 March 1998. I received the case on 18 March 1998 to determine whether clearance should be granted, continued, denied or revoked.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR; accordingly, I incorporate Applicant's admissions as findings of fact.

Applicant--a 33-year old employee of a defense contractor--seeks access to classified information.

On 25 February 1997, Applicant applied for a security clearance (Item 4). He misrepresented his drug and alcohol abuse record when he disclosed a December 1983 DWI arrest, but omitted four other drug and alcohol-related arrests. On 10 July 1997, Applicant falsified a sworn statement to the Defense Security Service⁽²⁾ (DSS)(Item 5) when he disclosed an additional alcohol-related arrest in January 1990,⁽³⁾ but did not disclose other drug and alcohol-related arrests in September 1981, March 1983, and May 1989. Applicant deliberately failed to disclose his drug and alcohol-related arrests on these two occasions because he was "embarrassed" and "ashamed." (Items 5, 6). Applicant provided no information in extenuation, mitigation, or rehabilitation.

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:

PERSONAL CONDUCT (CRITERION E)

Conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

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

- (2) 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, . . . [or] determine security clearance eligibility or trustworthiness. . . ;
- (3) deliberately providing false or misleading information concerning relevant and material matters to an investigator, . . . in connection with a personnel security or trustworthiness determination;

Conditions that could mitigate security concerns include:

None.

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;

Conditions that could mitigate security concerns include:

None.

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 Criteria E. The information sought by the Government on the security

clearance application and during the subject interview was relevant and material to the Government's investigation of the Applicant's fitness for access to classified information, and the Applicant knowingly and wilfully falsified that information. The Applicant's failure to fully disclose his drug and alcohol-related arrests until his second interview with the DSS suggests that he cannot be relied upon to speak the truth if the truth presents possible adverse consequences for his own interests. He knew the answers he provided were false; and indeed he knew the answers had to be false for him to get what he wanted--a security clearance. At no time did Applicant make any effort to fully disclose his drug abuse history, much less a prompt, good faith effort. Applicant's claims of embarrassment and shame explain, but do not mitigate, his conduct. The Industrial Security Program relies in great part on an individual's willingness to disclose just this sort of embarrassing information to permit the Government to make damage assessments in the event of possible compromise of classified information, and to permit the Government to make reasoned assessments of an individual's fitness for access to classified information. I find criterion E. against the Applicant.

The Government has established its case under Criteria J. The Applicant's knowing, multiple falsifications to an agency of the federal government on matters within that agency's jurisdiction clearly violate 18 U.S.C. §1001. The falsifications had the potential to influence the course of the background investigation--in areas of legitimate concern to the Government. I find criterion J. against the Applicant.

FORMAL FINDINGS

Paragraph 1. Criterion E: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the applicant

Paragraph 3. 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. Then known as the Defense Investigative Service.
3. Although Applicant actually put this arrest in 1985, by location of the offense it corresponds to the 1990 arrest.