

SYNOPSIS

Applicant has a history of recurrent use of illegal substances (primarily methamphetamine). With a previous employer he tested positive in a random drug test, and more recently he was diagnosed methamphetamine dependent and failed to complete a drug treatment program before successfully completing his latest drug treatment program. Of added security concern are Applicant's understatement of his amphetamine use in the security clearance application he completed in January 2006. His recurrent history of methamphetamine use and understated use in his security clearance application are not mitigated under Guidelines H and E. Clearance is denied.

STATEMENT OF THE CASE

On April 26, 2007, 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 his clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on May 26, 2007, and requested a hearing. The case was assigned to me on June 22, 2007, and was scheduled for hearing on July 26, 2007. A hearing was held on July 26, 2007, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of two exhibits; Applicant relied on one witness (himself) and no exhibits. The transcript (R.T.) was received on August 8, 2007.

PROCEDURAL ISSUES

Before the close of the hearing, Applicant requested leave to keep the record open to permit him the opportunity to supplement the record with treatment records from his outpatient treatment provider. For good cause shown, Applicant was granted seven days to supplement the record. The Government, in turn was allowed seven days to respond. Within the time permitted, Applicant furnished a discharge summary from his most recent CR drug treatment provider. There being no objection from the Government, and good cause demonstrated, Applicant's discharge summary is admitted as Applicant's exhibit A.

SUMMARY OF PLEADINGS

Under Guideline H, Applicant is alleged to have (a) used amphetamines, with varying frequency, from approximately 1984 until at least February 2006, (b) attended substance abuse treatment at the Ex Group between February and July 2006, and (c) been fired from his previous employment following a positive drug test in approximately March 2004.

Under Guideline E, Applicant is alleged to have (a) falsified his security clearance application (SF-86) of January 2006 by falsely understating his use of controlled substances.

For his response to the SOR, Applicant admitted misusing prescription drugs, attending substance abuse treatment with the Ex Group, and being fired by a previous employer following a positive drug test in 2004. However, he denied ever falsifying his security clearance application.

FINDINGS OF FACT

_____Applicant is a 40-year-old truck driver for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant is married with three children: ages eleven, eight and three (R.T., at 23). He began using methamphetamines at the age of 17. He attributes youth and curiosity to his introduction to the drug, and used it occasionally in high school. After a short period of avoidance after high school, he resumed his use of the substance. During his 20s he used methamphetamines once every six months (R.T. , at 24). He increased his use of the substance to monthly use during his 30s, expending \$40.00 a setting on purchases of the substance (R.T., at 24).

Applicant tried several times, without success, to quit his drug use. In 1999 he entered an inpatient substance abuse program. After less than a month in the program he was detected gambling and was discharged without completing the program (R.T., at 30-32).

In March 2004, while employed by another employer, Applicant tested positive for methamphetamine (R.T., at 27) and was subsequently fired by his employer (albeit for performance, and not for drug reasons). He attributes his abuse of methamphetamine to marital problems with his wife. At his wife's urging, he enrolled in a recognized outpatient program (Ex) in February 2006 (R.T., at 29). He was diagnosed as drug dependent by his Ex treatment counselor and continued in the program for several months before he quit attending treatment sessions (*see ex. 2*; R.T., at 29). In May 2004, he withdrew from the Ex program altogether after telling his treatment counselors he was still using methamphetamine (*see ex. 2*; R.T., at 29, 36-37). Applicant estimates to have used methamphetamine on a weekly basis for two years prior to his entering the Ex program (R.T., at 48-50). He paid for his methamphetamine drugs between this 2002-2005, and raised the cash for his purchases.

Before joining his current employer in October 2005, Applicant estimates to have used methamphetamines on a weekly basis for at least two years (R.T., at 48-49). Over his wife's objections, he continued to use amphetamine drugs even after going to work for his current employer.

In July 2006, Applicant enrolled in a faith based four-month inpatient program (CR), which is characterized as a mission life skills substance abuse program. Upon admission to CR, he was diagnosed with substance dependence (for methamphetamine) under the DSM-IV-TR (*see ex. A*). After being detoxed on the first day of his stay, he spent the ensuing 90 to 100 days at the program's

facility in group treatment (concentrating on changing his life), in addition to attending individual weekly counseling sessions and 12-step meetings, and completing his reading assignments (*see ex. A*). After discharge, CR recommended that Applicant attend no less than three weekly meetings of Alcoholics Anonymous (AA) or Narcotics Anonymous (90 meeting in 90 days) and talk to his sponsor weekly during his stay with the facility (*see ex. A; R.T., at 40*). Applicant has complied with these AA/NA aftercare recommendations and continues to attend AA meetings to ensure his abstinence (*R.T., at 40-41*).

Applicant documents his successful completion of the CR inpatient program in December 2006 (*see ex. A; R.T., at 33-36*). CR's exit diagnosis noted no change in its initial dependence diagnosis but credited Applicant with the necessary changes to maintain his sobriety (*see ex. A*). He has not used methamphetamine since his discharge and still to attend AA meetings (*R.T., at 35-36*).

Applicant's credits his CR inpatient care to helping him to love God and himself more than he was ever able to do for himself. With his continued AA/NA attendance and support from his sponsor and other AA/NA members, Applicant continues to make progress with his drug problem.

Applicant completed an SF-86 in January 2006. When responding to question 24a, he listed his use of methamphetamines between February 2004 and March 2004, but omitted any other use. Applicant attributes his understated use to his concerns over being denied a job with E-3 (*R.T., at 37-38*). When subsequently interviewed by an OPM investigator Applicant initially informed the investigator that he had used methamphetamine on two to three occasions between February and March 2004 (*R.T., at 39*). Only after he was confronted by the investigator did Applicant disclose his more extensive use of amphetamines (*R.T., at 39*).

POLICIES

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the Mitigating Conditions, if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Drug Involvement

The Concern: Improper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social

or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

Personal Conduct

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Burden of Proof

By virtue of the precepts framed by the revised Adjudicative Guidelines, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

_____ Applicant has a long history of amphetamine use, and more recently was diagnosed as amphetamine dependent by a treatment facility. Applicant's recurrent involvement with illegal substances over a 22-year period, coupled with his understated drug use in the SF-86 he completed in January 2006 while in the employ of his current employer, raise security significant issues about his judgment, reliability and trustworthiness.

Drug issues

By his own acknowledgments, Applicant's methamphetamine use has been a steady progression since he returned to using the substance following a brief period of abstinence after high school. Between 2002 and 2006, he used the substance on a weekly basis. He continued to use the substance, even testing positive for the drug with his prior employer in 2004, and he was later diagnosed as methamphetamine dependent. Introduced to methamphetamine in high school, he experimented with other drugs briefly after high school (notably cocaine) before settling on methamphetamine as his drug of choice. He enjoyed recurrent periods of reduced drug usage before committing to regular usage during the 2002-2006 time frame.

Applicant's recurrent use of methamphetamine is sufficient to invoke four of the disqualifying conditions of the Adjudicative Guidelines for drugs, *i.e.*, DC 25(a) (*any drug abuse*), DC 25(b) (*testing positive for illegal drug use*), DC 25(c) (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution, or possession of drug paraphernalia*), and DC 25(d) (*diagnosis of a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist)*). Although Applicant failed to complete his Ex program, he is credited with did successfully completing his subsequent CR program. As a result, DC 25(f) (*failure to successfully complete a drug treatment program prescribed by a duly qualified medical professional*) has only limited applicability.

Applicant has not used amphetamines since December 2006 and assures he will not use the substance in the future. To be sure, misconduct predictions (to include return to illegal drug use), generally, may not be based on supposition or suspicion. *See* ISCR Case No. 01-26893 (Appeal Bd. October 2002); ISCR Case No. 97-0356 (App. Bd. April 1998). The Appeal Board has consistently held that an unfavorable credibility determination concerning an applicant is not a substitute for record evidence that the applicant used illegal drugs since his last recorded use, or based on his past use he is likely to resume drug usage in the future. *See* ISCR Case No. 02-08032 (Appeal Bd. May 2004). Based on Applicant's long history of sustained methamphetamine use, his dependence diagnosis, his past minimizing of the extent of his use, and his one failed treatment program in his record, it is simply too soon to enable him to claim the benefits of any of the mitigating conditions of the guideline for drug involvement.

Applicant's recently completed treatment program with CR and his assurances that his methamphetamine involvement is a thing of the past must be balanced against his considerable history of recurrent use (at times quite heavy), his positive drug test with his prior employer, his dependence diagnosis, his understatements when asked about his drug use, and the relatively short amount of time that has elapsed since he completed his drug treatment program with CR and ceased using methamphetamine. Considering all of the developed evidence of record, Applicant fails to mitigate security concerns associated with his recurrent use and possession of illegal substances. Unfavorable conclusions warrant with respect to sub-paragraphs 1.a through 1.c of Guideline H.

Falsification issues

Potentially serious and difficult to reconcile with the trust and reliability requirements for holding a security clearance are the timing and circumstances of Applicant's drug use understatements in the SF-86 he completed in January 2006 and withholding of his more extensive usage until he was confronted in an ensuing OPM interview. So much trust is imposed on persons

cleared to see classified information that deviation tolerances for candor lapses are gauged very narrowly.

Mitigation is difficult to credit Applicant with, since he failed to promptly correct his SF-86 understatements before being confronted in his ensuing OPM interview. In the past, the Appeal Board has denied applicants availability of the predecessor mitigating condition of MC 17(a) (*the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*) where the applicant has waited many months to timely correct a known omission. Compare ISCR Case No. 97-0289 (Appeal Bd. January 1998) with DISCR Case No. 93-1390 (Appeal Bd. January 1995). Compounding Applicant's delayed acknowledgments is his withholding of his more extensive methamphetamine use until after he was confronted by the OPM agent who interviewed him.

By minimizing his past involvement with illegal substances in his SF-86, Applicant concealed materially important background information needed for the government to properly process and evaluate his security updates. His attributed reasons for his understated drug usage (fear of losing his job) are not sustainable grounds for averting inferences of falsification. Weighing all of the circumstances surrounding his SF-86 illegal substance understatements and lack of any prompt, good faith corrections, Applicant's claims lack the necessary probative showing to avert drawn conclusions that he knowingly and deliberately withheld material background information about his prior use of illegal substances.

Considering all of the evidence produced in this record and the available guidelines in the Directive (inclusive of the E2.2 factors), unfavorable conclusions warrant with respect to sub-paragraph 2.a of Guideline E.

In reaching my decision, I have considered the evidence as a whole, including each of the E2 2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, I make the following FORMAL FINDINGS:

GUIDELINE H (DRUGS):	AGAINST APPLICANT
Sub-paras. 1.a - 1.c:	AGAINST APPLICANT
GUIDELINE E (PERSONAL CONDUCT):	AGAINST APPLICANT
Sub-para. 2.a:	AGAINST 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 Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge