

DATE: December 1, 2000

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0138

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On July 11, 2000, 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, 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 clearance should be denied or revoked.

The Applicant responded to the SOR in writing on July 31, 2000, and elected to have the case determined on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on September 13, 2000. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on September 21, 2000, and he submitted no response.

The case was transferred to the undersigned for resolution on November 7, 2000.

FINDINGS OF FACT

The Applicant is 29 years old, and is employed by a defense contractor. He is applying for a security clearance in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and criterion in the SOR:

Paragraph 1 (Guideline H - Drug Involvement). The Government alleges that the Applicant is ineligible for clearance because he has abused illegal substances.

The Applicant began using marijuana while in high school in 1987. From 1987 until 1990, he used marijuana less than 50 times. From 1990 until 1992, he used it less than 50 times. From 1992 to 1994, he again used it less than 50 times, and from 1994 until at least December 1998, he used it approximately four to five times. He usually used it in social settings with friends. He has never purchased marijuana as it was always provided by someone else. The Applicant states that he stopped using marijuana because he moved away from college and the friends with whom he used it. When asked what his future intentions regarding the use of marijuana were, the Applicant stated that, "This is a dumb question. I do not know if I will use marijuana in the future because the future is unknowable." (*See*, Government Exhibit 5). ⁽¹⁾

The Applicant used hallucinogenic mushrooms on two occasions in January 1996. He stopped using hallucinogenic mushrooms because it was not available. He has never purchased hallucinogenic mushrooms, as they were provided by a friend. He does not know what his future intentions are regarding the use of mushrooms. (*See*, Government Exhibit 5).

The Applicant has never been involved in the growing, manufacturing or producing of marijuana or any other drug. He has never sold any illegal drug. He has never received any counseling for drug abuse. He has used no other illegal drugs besides marijuana and mushrooms.

An undated letter from the Applicant indicates that he believes there was a miscommunication between himself and the Special Agent during the interview. He denies stating that he intended to use illegal drugs in the future. Instead, he states that he has no intentions to use illegal drugs in the future. (*See*, Government Exhibit 6).

The evidentiary record has been reviewed, but it does not contain sufficient evidence in mitigation that will overcome or outweigh the negative effects of the Applicant's long history of marijuana use.

POLICIES

Enclosure 2 of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Guideline H (Drug Involvement)

Conditions that could raise a security concern:

1. any drug abuse;
2. illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution;

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes

- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have 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. Finally, as emphasized by President Eisenhower in

Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in repeated instances of illegal drug use which demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by evidence that the Applicant has abused marijuana and hallucinogenic mushrooms, both illegal drugs (Guideline H). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, there is a nexus or connection with his security clearance eligibility.

Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

Drug abuse precludes an individual from properly safeguarding 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. This is so because of the obvious potential for an unauthorized disclosure of defense secrets resulting from neglect or misadventure caused by the abuse of illegal drugs. If an Applicant has demonstrated a lack of respect for the law in his private affairs, there then exists the possibility that an Applicant may demonstrate the same attitude towards security rules and regulations.

The Applicant's use of marijuana has extended over the course of his adult life, for a twelve year period, from 1987 to at least December 1998. His repeated use of marijuana cannot be attributed to experimentation or youthful indiscretion. It is noted that the Applicant's marijuana use last occurred in December 1998, about two years ago. However, during the preceding twelve years that he used it, he simply ignored the fact that the use of marijuana is illegal.

The Applicant states during his interview with DSS in December 1999, that he is uncertain as to his future use of marijuana and hallucinogenic mushrooms. More recently, he has changed his intentions, and no longer intends to use any illegal drug. Given his long history of marijuana use, it is impossible at this point to have confidence in the Applicant's claim that he has no intentions of ever using any illegal drug again. Moreover, the Applicant did not reply to the Government's FORM, and the record is silent as to any evidence of mitigation. The Applicant has not adequately demonstrated rehabilitation as to his illegal drug use, nor has he demonstrated that he possesses the good judgment, reliability and trustworthiness required of someone seeking access to the nations secrets. This Applicant cannot be considered trustworthy. Accordingly, Guideline H (Drug Involvement), is found against the Applicant.

Under the circumstances, the Applicant cannot be deemed to be sufficiently rehabilitated in the area of his Drug Involvement to warrant granting his security clearance request.

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

Subpara. 1.c.: Against the Applicant.

Subpara. 1.d.: 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 the Applicant.

DARLENE LOKEY ANDERSON

Administrative Judge

1. On December 16, 1999, during an interview with a Special Agent from the Defense Security Service, (DSS), the Applicant provided information concerning his illegal drug involvement. The information was placed in a statement. The Applicant declined to sign the statement because he claims that it was not adequately explained to him that the interview was voluntary. A Certified Results of Interview (CRI) dated December 21, 1999, indicates that the information contained in the statement accurately reflects what the Applicant told the Special Agent during the interview. (*See*, Government Exhibit 5).