

DATE: May 21, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-00323

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Brian Andrew Laird, Esquire

SYNOPSIS

Applicant's illegal drug use, and his omissions on his security clearance application and in a sworn statement to DSS regarding his drug use, have not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

STATEMENT OF THE CASE

On November 1, 2001, 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 his clearance should be denied or revoked.

The Applicant responded to the SOR in writing on December 3, 2001, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on January 30, 2002. A notice of hearing was issued on February 12, 2002, scheduling the hearing for March 12, 2002. Applicant's Counsel requested a continuance based upon good cause and it was granted. The hearing was rescheduled and held on April 10, 2002, at which the Government presented four exhibits. The Applicant presented seventeen exhibits. The Applicant testified on his own behalf. The official transcript (Tr.) was received on April 18, 2002.

FINDINGS OF FACT

The Applicant is 27 years old, married, and has a Bachelor's Degree in Engineering. He is employed as a Mechanical Engineer 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 guideline 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 in 1990, and continued to use it at varying frequencies until November 2001. In the beginning, in 1990, he used marijuana at least once or twice a month while in high school. At that time, most of his friends used marijuana. He continued to use marijuana through college. By the time he was through his second year of college, his use of marijuana had increased to almost every weekend. This pattern of use continued until the summer of May 1995. He then decreased his use of marijuana to about two or three times a semester. During this period, the Applicant purchased marijuana by pitching in money with his friends to buy some to use on the weekends. (Tr. p. 51). He last purchased marijuana in March 2000.

In 1994, the Applicant was caught possessing marijuana after he had been using it in his college dormitory. The Resident Assistant smelled the marijuana odor and called the campus police. As a result, the college placed the Applicant on two years probation. The Applicant never completed the two years probation because he moved out of the dormitory in May 1995.

In 1995, the Applicant used cocaine and hallucinogenic mushrooms. He has not used them since then.

In June 1998, the Applicant started working for his current employer. The Applicant states that he did not use any marijuana between December 1998 and November 1999. In November 1999, he began using it again. He last used marijuana in November 2001.

After realizing that the use of illegal drugs is prohibited by the Department of Defense, in November 2001, the Applicant voluntarily enrolled in an 18 month drug rehabilitation program that he is personally paying for. The extensive program includes both individual therapy once a week for 54 weeks, as well as Narcotics Anonymous meetings twice a week during the treatment. Random urinalysis was also suggested. After completing the 54 week program, the Applicant will start a six month after care program. The Applicant is currently working the 12 steps of Narcotics Anonymous. He is presently on the fourth step. The Applicant will complete the treatment program and aftercare program in approximately May 2003.

Paragraph 2 (Guideline E- Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, and an unwillingness to comply with rules and regulations.

The Applicant completed an application for security clearance dated April 21, 1999, which required the Applicant to indicate since the age of sixteen or in the last seven years, whichever is shorter, if he illegally used any controlled substance. The Applicant answered "YES", and listed his used of marijuana on only one occasion in 1994. (*See*, Question 27, Government Exhibit 1). This was not a truthful answer. The Applicant failed to reveal the true extent of his marijuana use, and his use of cocaine and hallucinogenic mushrooms. (Government Exhibit 3). The Applicant explained that he was embarrassed and afraid that if he told the truth he would not get his security clearance and he would lose his job. (*See*, Government Exhibit 3 and Tr. pp. 48 - 49).

The same security clearance application asked the Applicant, "In the last seven years, have you been involved in the illegal purchase, manufacturing, trafficking, production, transfer, shipping, receiving or sale of any narcotic, depressant, stimulant, hallucinogen, or cannabis for your own intended use or the use of another?" The Applicant answered, "NO". (*See*, Question 29, Government Exhibit 1). This was a false answer. The Applicant had purchased marijuana in college. (Government Exhibit 3). The Applicant explained that he was embarrassed and afraid that if he told the truth he would not get his security clearance and he would lose his job. (*See*, Government Exhibit 3 and Tr. p. 51).

The Applicant provided a signed sworn written statement, dated January 26, 2000, witnessed by a Special Agent from the Defense Security Service, wherein he stated that he had used marijuana on only one occasion in 1994, and that he had never used marijuana since then, nor had he ever used any other illegal substance. (*See*, Government Exhibit 2). This was also untrue. The Applicant had used marijuana to a greater extent, and he had also used cocaine and hallucinogenic mushrooms. He has also purchased marijuana. (Government Exhibit 3 and Tr. pp. 87 - 88). The

Applicant was embarrassed and afraid that if he told the truth he would not get his security clearance and he would lose his job. (*See*, Government Exhibit 3 and Tr. p. 49- 50).

Following a polygraph examination, the Applicant made a conscious decision to tell the investigator the truth concerning his past illegal drug involvement, in a statement he provided to the DSS dated March 23, 2000. (Government Exhibit 3). In that statement, the Applicant indicated that he had future intentions of using marijuana. Since then, however, the Applicant has learned that it is not acceptable to use illegal drugs and hold a security clearance. He now indicates that he has no future intentions of ever using marijuana. (Tr. p. 84).

I find that the Applicant's responses to Questions 27 and 29 on his security clearance application of April 21, 1999, and his statement to DSS dated January 26, 2000, concerning his marijuana use, were deliberate, knowing, wilful attempts to conceal material information from the Government. The Applicant's responses to the questions were completely false and inaccurate, and he knew or should have known that they were false when he provided them to the Government.

Paragraph 3 (Criterion J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he knowingly and willfully violated the felony provisions of 18 USC 1001, a federal criminal statute.

During the clearance screening process the Applicant knowingly provided false material information about his drug related history. As a consequence, the Applicant violated the felony provisions of 18 USC 1001, pertaining to false official statements.

Mitigation.

The Applicant submitted many certificates and awards of achievement obtained during his current employment. (Applicant's Exhibit K).

A performance appraisal for the period from January 2000 through December 2000, indicates an above average overall rating of "achiever" and "contributor." (Applicant's Exhibit N).

Several letters of recommendation from several coworkers and friends collectively indicate that the Applicant is professional, mature, conscientious and trustworthy. (Applicant's Exhibit O).

A letter from the Applicant's drug counselor corroborates the fact that the Applicant is currently enrolled in an 18 month substance treatment program. (Applicant's Exhibit P).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent Guideline. However, the conditions are neither automatically determinative of the decision in any

case, nor can they supersede the Administrative Judge's reliance on his or her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

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.

Guideline E (Personal Conduct)

Conditions that could raise a security concern:

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 employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;
3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination;
5. A pattern of dishonesty or rule violations.

Conditions that could mitigate security concerns include:

None.

Criterion J (Criminal Conduct)

Conditions that could raise a security concern:

1. any criminal conduct, regardless of whether the person was formally charged;
2. a single serious crime or multiple lesser offenses

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 guidelines established in the DOD Directive identify personal characteristics and conduct that 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 an acceptable security risk. Eligibility for access to classified information is predicated 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. All 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 a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence that 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 drug abuse, personal conduct and criminal conduct that demonstrate 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 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 burden 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 that the Applicant (1) has abused marijuana (Guideline H), (2) falsified his security clearance questionnaire (Guideline E), and (3) was not truthful during his interview with DSS (Guideline E). 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.

The Applicant used marijuana from 1990 until at least November 2001, over an eleven year period, and continued to use it even after he became employed in the defense industry. Given the extent of his marijuana use, and the fact that he has completed only six months of an 18 month drug treatment program, the possibility is still quite great that he could revert back to his old habits of marijuana use. Furthermore, the Applicant has not been candid with the Government in the past, and it is impossible at this point to have confidence in the Applicant's claim that he has no intentions of ever using illegal drugs in the future.

As previously indicated, the Applicant's falsifications on his security clearance application and during his DSS interview were intentional and deliberate, and raise serious doubts about his character, integrity and honesty. Furthermore, he violated a federal criminal statute, 18 USC 1001. Consequently, I cannot conclude that he is now a reliable and trustworthy individual. Accordingly, Guidelines H (Drug Involvement), E (Personal Conduct), and J (Criminal Conduct) are found against the Applicant.

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 Paragraphs 1, 2 and 3 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.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: Against the Applicant.

Subpara. 2.c.: Against the Applicant.

Subpara. 2.d.: Against the Applicant.

Paragraph 3: Against the Applicant.

Subpara. 3.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 the Applicant.

DARLENE LOKEY ANDERSON

Administrative Judge