

DATE: March 28, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-01213

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On August 16, 2001, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, 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 a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on September 15, 2001, and requested a decision without a hearing. On December 11, 2001, the Applicant requested that he be given a hearing. The case was received by the undersigned on December 14, 2001, and a Notice of Hearing was issued on January 7, 2002.

A hearing was held on January 31, 2002, at which the Government presented six documentary exhibits, and called one witness. Testimony was taken from the Applicant, who also submitted nine exhibits. The transcript was received on February 12, 2002.

FINDINGS OF FACT

The Applicant is 44, single, and has a high school diploma. He is employed by a defense contractor as an avionics technician, and he seeks to obtain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the 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. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline H - Drug abuse). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he abuses illegal drugs.

The Applicant first began using marijuana in the 1970s. He used it at varying frequencies until Spring 2000. The Applicant testified that his use had no set pattern and would range from daily to twice a week. He would smoke marijuana to calm down. The Applicant admitted that he used marijuana for several months after being interviewed by a Defense Security Service (DSS) agent in December 1999. (Transcript at 43-45.) The Applicant has not used marijuana for about a year and a half and evinces a credible intent not to use marijuana in the future.

The Applicant admitted that in 1974 he was arrested for possession of marijuana. (Transcript at 65.) The record also shows that the Applicant received non-judicial punishment for possession of marijuana in 1976, while on active duty with the United States Armed Forces. (Government Exhibit 6.) The Applicant also admitted purchasing marijuana on an occasional basis during the entire period that he was using it.

Paragraph 2 (Guideline G - Alcohol abuse). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he uses intoxicants to excess.

The Applicant consumed alcohol to excess during the period from 1977 to December 1999. He admits that during that period he was a problem drinker and an alcoholic. (Transcript at 53.) He admits that he had one alcohol related arrest while a minor in 1977. A lot of his drinking was in the form of self-medication as the Applicant has suffered from a Bipolar disorder first diagnosed in 1990. (Applicant's Exhibits B and C.)

The Applicant's psychiatrist states, "[The Applicant's] diagnoses are Bipolar Disorder and there is a history of Alcohol Abuse and Dependence. . . . He has been active in psychotherapy and is mostly sober." (Applicant's Exhibit B.)

Because of his drinking, and the Bipolar disorder he suffers from, the Applicant has been hospitalized three times between 1987 and 1999. These hospitalizations were short-term in nature, usually not lasting more than a week. The Applicant does not believe that any of the hospitalizations included treatment for Alcohol Abuse.

The Applicant has reduced his drinking considerably. When the Applicant drinks, he does not drink to excess. He intends to continue cutting down his drinking and hopes to stop drinking in the future. (Transcript at 53.)

Paragraph 3 (Guideline J - Criminal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has engaged in criminal acts.

In 1994 the Applicant was on medication for his Bipolar disorder. In early August he stopped taking his medication for several days. As a result, the Applicant began suffering from manic episodes. The end result were arrests on August 13 and 14. (Government Exhibits 3 and 4.) The police thought that the Applicant was intoxicated at the time. The Applicant maintains that he was not and, after the second episode, he was hospitalized. He eventually received a suspended sentence and was given a small fine. He has not been arrested since.

Paragraph 4 (Guideline E - Personal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

On June 18, 1999, the Applicant completed an official DoD questionnaire in which he stated that he had never been charged or convicted of any offenses related to alcohol or drugs. (Government Exhibit 2 at Question 24.) This was a false answer to a relevant question concerning the Applicant's criminal history. The Applicant subsequently admitted that he had been charged with Possession of Marijuana and Driving Under the Influence of Narcotics in 1974. He also admitted being charged with Minor in Possession of Alcohol in 1977.

Concerning his failure to admit his drug and alcohol related arrests, the Applicant stated. "I admit I was not honest on the EPSQ by not reflecting full and accurate information. I feared it would hurt my chances of getting a clearance if the full extent of my problems were known. I admit this dishonesty by me was an intentional and willful act. I will be honest in all future security forms I fill out." (Government Exhibit 1 at 3.)

At the hearing the Applicant attempted to disavow this sworn statement, alleging that the DSS may have overstated the

case. In addition, the Applicant stated that he had considerable difficulty filling out the computerized form, as he was not computer literate at that time. (Transcript at 68-70.)

The Government also alleges that the Applicant falsified Question 26, which asks about certain offenses which occurred in the seven years preceding the date of the questionnaire. The Applicant admitted that he had been arrested on August 13, 1994, and charged with Interfering With a Police Officer and Littering on Public Property. The Applicant did not admit his arrest for Assaulting a Police Officer on August 14, 1994. (Government Exhibit 2 at Question 26.)

Applicant's Exhibit A shows that, in September 1998, the Applicant went to his local police department and attempted to find out his arrest record information. He did this in anticipation of having to fill out a questionnaire. This form shows the 1993 arrest, which the Applicant admitted. It did not show the 1994 arrest at all. The Applicant filled out Question 26 in reliance on this form, which he had received from his local police authorities. (Transcript at 61-63.)

Mitigation.

The Applicant submitted documentation showing that he is a valued, long-standing employee of his company. (Applicant's Exhibits E and F.) He is involved in his local community. (Applicant's Exhibit D.) He is an Honorably discharged veteran. (Applicant's Exhibit G.) The Exhibits also show that the Applicant is trying hard to better himself educationally, especially in the field of computers. (Applicant's Exhibit H.)

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. 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 of the stated conditions have application in this case.)

Guideline G (Alcohol consumption)

Conditions that could raise a security concern:

- (1) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol abuse;
- (3) diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

Conditions that could mitigate security concerns:

- (3) positive changes in behavior supportive of sobriety;

Guideline J (Criminal conduct)

Conditions that could raise a security concern:

- (1) Allegations or admission of criminal conduct, regardless of whether the person was formally charged;
- (2) A single serious crime or multiple lesser offenses;

Condition that could mitigate security concerns:

- (1) the criminal behavior was not recent;

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;

Conditions that could mitigate security concerns:

(None of the stated conditions have application in this case.)

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 factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- 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 of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

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 a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in drug and alcohol abuse, criminal conduct and falsifying security documents that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge 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. 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

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 granting 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 by substantial evidence that the Applicant has used illegal drugs (Guideline H); that he has a history of abusing alcohol (Guideline G); that he has been charged with criminal acts in 1995 (Guideline J); and that he intentionally made false material statements to DoD (Guideline E).

The Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him, except in part.

Applicant's marijuana use ended less than two years before the record closed. The Applicant's credible intent not to use marijuana in the future is admirable. However, under the particular circumstances of this case, the Applicant has not mitigated this allegation at this time. Accordingly, Guideline H is found against the Applicant.

Turning next to Paragraph 2, concerning the Applicant's alcohol history. The evidence shows that the Applicant has had a serious alcohol problem in the recent past. By his own admission, the Applicant was an alcoholic or problem drinker up to December 1999. While he drinks at a lesser rate, the Applicant has not stopped his alcohol use. The Applicant's psychiatrist states that he has been "mostly sober." After a thorough consideration of the Mitigating Conditions, I find that none of them apply to the Applicant at this time. Guideline G is found against the Applicant.

In 1994, as a result of a manic episode, the Applicant was arrested on successive days. After the second arrest he was hospitalized and stabilized. While regrettable, the Applicant has always taken responsibility for these incidents, which occurred almost nine years ago. The Applicant has not had any subsequent arrests, and is continuing with psychotherapy and medication in order to avoid recurrence. Guideline J is found for the Applicant.

The Government relies heavily upon the integrity and honesty of clearance holders, and it is a negative factor for security clearance purposes where an Applicant has deliberately provided false information about material aspects of his or her personal background. At the time the Applicant filled out his Security Clearance Application, he remembered that alcohol and drug-related incidents had occurred in his past, he knew that he should admit them, and he knowingly chose not to do so. In making this conclusion I have considered the fact that the Applicant was not computer literate and needed help to complete the questionnaire. I have also considered the age of the offenses the Applicant was obligated to admit. Notwithstanding the fact that they occurred over 20 years ago, the Application required that he admit them. Paragraph 4 and Subparagraph 4.a. are found against the Applicant.

Subparagraph 4.b. is found for the Applicant as I have determined that the false statement in this subparagraph was not willful. The Applicant, in good faith, used the description given in government records in filling out Question 26 of his Security Clearance Application (Government Exhibit 2).

The Applicant's efforts at reform are noted, and he is commended for his decision to refrain from further drug use and

continue to reduce his alcohol use. However, under the particular circumstances of this case, this evidence does not overcome the adverse information that has been presented by the Government.

On balance, it is concluded that the Applicant has failed to overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the conclusionary allegations expressed in Paragraphs 1, 2 and 4 of the Government's Statement of Reasons. As set forth above, Paragraph 3 is found for the Applicant.

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.

Subparagraph 1.a.: Against the Applicant.

Subparagraph 1.b.: Against the Applicant.

Subparagraph 1.c.: Against the Applicant.

Subparagraph 1.d.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subparagraph 2.a.: Against the Applicant.

Subparagraph 2.b.: Against the Applicant.

Subparagraph 2.c.: Against the Applicant.

Paragraph 3: For the Applicant.

Subparagraph 3.a.: For the Applicant.

Paragraph 4: Against the Applicant.

Subparagraph 4.a.: Against the Applicant.

Subparagraph 4.b.: For 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.

Wilford H. Ross

Administrative Judge