

DATE: September 17, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-06277

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's intentional falsifications on his security clearance application and in his signed sworn statement before the Defense Security Service have not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

STATEMENT OF THE CASE

On April 1, 2002, 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 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 April 19, 2002, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on June 28, 2002. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on July 24, 2002, and he submitted no response. The case was assigned to the undersigned for resolution on August 28, 2002.

FINDINGS OF FACT

The Applicant is 26 years old, and is employed as a Proposal Analyst Associate for 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 E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

The Applicant completed a Security Clearance Application (Standard Form 86) dated November 9, 1999. In response to question 20, which asked, "Have any of the following happened to you in the last ten years?, Fired from a job, - Quit a job after being told you'd be fired, - Left a job by mutual agreement following allegations of misconduct, - Left a job by mutual agreement following allegations of unsatisfactory performance, - Left a job for other reasons under unfavorable circumstances." The Applicant answered "Yes", and stated that he had left a job at Macy's in August 1996 by mutual agreement following allegations of misconduct, the entire department was released due to allegations of fraud. (See, Government Exhibit 4). This was not a truthful statement. The truth is that the Applicant and one other coworker were actually terminated for time reporting fraud. The Applicant later explained that he has no reason as to why he did not freely admit to having been terminated. He is ashamed and admits that he is at fault for having been involved in such misconduct and for lying on his security clearance application. (See, Applicant's Answer to SOR).

The same application, question 27, asked, "Since the age of 16 or in the last 7 years, which ever is shorter, have you illegally used a controlled substance or prescription drugs?" The Applicant answered "YES" to this question, and stated that he had habitually used methamphetamine from December 1995 until February 1996. (See, Government Exhibit 4). This was not a correct statement. The Applicant had in fact used methamphetamine from December 1994 until February 1996. The Applicant explained that he did not intend to mislead the Government. He simply made an honest error as to the dates of his drug usage. He states that he has been drug free and clean for the last six years.

In a signed sworn statement provided to the Defense Investigative Service dated February 24, 2000, the Applicant categorically denied that he was involved in any misconduct at Macy's department store involving time card falsification or any other illegal act. (See, Government Exhibit 5). This was not a truthful statement. As mentioned above, the Applicant had been involved in time card falsification and was terminated for the misconduct. (See, Applicant's Answer to SOR).

In the same signed sworn statement, the Applicant stated that, "I first experimented with Crystal Methamphetamine, December 1995. . . from the time of first use I continued to share a pipe containing the drug on a daily basis including weekends until my last use in February 1996, or on my birthday." (See, Government Exhibit 5). This was not a correct statement. The Applicant had in fact used methamphetamine from December 1994 until February 1996. Again, as mentioned above, the Applicant explained that he simply made an error in the dates as to his drug usage. (See, Applicant's Answer to SOR).

The Applicant states that over the past two and a half years that he has worked with the defense industry he has learned much about being involved with highly sensitive work. He states that he now understands that he should have been truthful with the Government on his security clearance application and in his sworn statement concerning his personal and work related history. He realizes that he made a bad mistake by not revealing the truth. He believes he has now learned from his mistakes.

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 E (Personal Conduct)

Condition 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 statute, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

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 an acceptable security risk. 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 instances of dishonesty 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 burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

In this case the Government has met its initial burden of proving that the Applicant intentionally falsified material facts in his security clearance application and in a sworn statement provided to the 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, I conclude 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.

With respect to the Applicant's failure to reveal the extent of his methamphetamine use on his security clearance application and in his sworn statement, I do not find that it was intentional. He admitted to its use, and made an honest mistake as to the dates of his actual drug usage. He mistakenly indicated that he used methamphetamine from December 1995 until February 1996, instead of when he actually used it from December 1994 until February 1996. Under the particular facts of this case, this simple error can be understood. Accordingly, I find for the Applicant under subparagraphs 1.b., and 1.d of the SOR.

On the other hand, the Applicant clearly admits to falsifying his security clearance application and his signed sworn statement concerning his employment history because he was ashamed to reveal it. Consequently, the evidence proves that the Applicant has not been completely honest with the Government regarding his employment history. I find that the Applicant deliberately failed to reveal it to the Government.

The Government relies heavily upon the integrity and honesty of clearance holders. It is a negative factor for security clearance purposes when an Applicant has deliberately provided false information about material aspects of his personal background. This Applicant has not demonstrated that he is trustworthy, and does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline E (Personal Conduct).

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, (except subparagraphs 1.b., and 1.d.) 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.: For the Applicant.

Subpara. 1.c.: Against the Applicant.

Subpara. 1.d.: 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.

Darlene Lokey Anderson

Administrative Judge