

DATE: September 26, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-09874

**DECISION OF ADMINISTRATIVE JUDGE**

**WILFORD H. ROSS**

**APPEARANCES**

**FOR GOVERNMENT**

Erin C. Hogan, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant mitigated concerns about excessive traffic fines in 1998 and 1999. The Applicant also mitigated allegations of drug use up to 1994, and four drug related arrests between 1985 and 1991. However, the Applicant falsified a 1998 questionnaire with regards to the same drug use and arrests. Adverse inference is not overcome. Clearance is denied.

**STATEMENT OF THE CASE**

On May 21, 2002, 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 June 13, 2002, and requested that the case be decided without a hearing. The Government submitted its File of Relevant Material (FORM) to the Applicant on June 28, 2002. The Applicant was given 30 days from receipt of the FORM to submit any documents in rebuttal, extenuation or mitigation. The Applicant received the FORM on July 9, 2002, and submitted a Response on August 6, 2002. The Department Counsel did not object to the admissibility of the additional material submitted by the Applicant; consisting of a notarized statement by the Applicant, a letter from the Director, Human Resources and Security of his employer, and a resume. The case was received by the undersigned on August 19, 2002.

**FINDINGS OF FACT**

The Applicant is 34 and single. He is employed by a defense contractor as a Senior Network Engineer, 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.

1.a. The Applicant admits that he used marijuana from approximately 1982 to 1994. During this period, the Applicant used marijuana two to three times per week. (Exhibit 6 at 2.) The Applicant states he has not used marijuana since 1994 and expresses a credible intent not to use marijuana in the future.

1.b. The Applicant admits using cocaine one time during the period 1982 to 1994. The available record does not provide a specific date for this incident.

1.c. The Applicant was arrested for marijuana possession on October 25, 1992. The SOR alleges that the Applicant appeared in Municipal District Court on December 8, 1992, where the charges were stricken from the record. The Applicant admits that, to his knowledge, the charges were stricken from the record. He does not recall going to court.

1.d. The Applicant was arrested for marijuana possession on January 2, 1991. The SOR alleges that the Applicant appeared in Municipal District Court on January 31, 1991, where the charges were stricken from the record. The Applicant admits that, to his knowledge, the charges were stricken from the record. He does not recall going to court.

1.e. The Applicant was arrested for marijuana possession on June 26, 1989. The SOR alleges that the Applicant appeared in Municipal District Court on July 7, 1989, where the charges were stricken from the record. The Applicant admits that, to his knowledge, the charges were stricken from the record. He does not recall going to court.

1.f. The Applicant was arrested for marijuana possession on July 17, 1985. The Applicant states in his Answer that, to the best of his knowledge, the charge was dismissed. He does not recall going to court.

Paragraph 2 (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 December 7, 1998, the Applicant completed an official DoD questionnaire in which he stated that he had not used marijuana or other illegal drugs in the last seven years. (Government Exhibit 5, question 27.) This statement was a false answer to a relevant question concerning the Applicant's drug activity since he had in fact used marijuana from 1991 through 1994, and had been arrested for possession of marijuana in 1992.

On the same questionnaire the Applicant also stated that he had never been charged or convicted of an drug related offenses. In fact he had been arrested and charged with possession of marijuana on four occasions, 1985, 1989, 1991 and 1992. The Applicant maintains that he misread this question to mean convictions, not charges. The Applicant's explanation of the facts is not accepted. He knew these events took place when he filled out the questionnaire in 2000, and intentionally failed to tell the government about them.

The Applicant was subsequently interviewed by a Special Agent of the Defense Security Service (DSS) in March 2002. In a sworn statement the Applicant sets forth his drug use. He further states, "In regards to Item 24 on the EPSQ application 'Your Police Record' Alcohol drug offences. I answered NONE because I did not recall having any subsequent inquiries show that I had been arrested for possession (*sic*) but not convicted. Therefore, because I was not convicted, the answer to offences was listed as none. As for the arrests, I did not list them because they did not lead to anything and perhaps I should have." (Exhibit 6 at 1.)

In October 1998, the Applicant moved from State A to State B. At the time he moved, he had an outstanding ticket for an insurance violation in State A. When he arrived in State B, he found he could not get a driver's license because of the State A ticket. The Applicant states that it took some time to gather the money to resolve the ticket, and he had to drive on his expired State A license to get to work. During this period the Applicant was arrested for driving on an expired

license in November 1998. The Applicant finally resolved both situations and received a State B driver's license a year later, in November 1999.

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.

The conduct set forth under subparagraphs 1.c., 1.d., 1.e. and 1.f., above, will also be considered under this Paragraph.

As found above, the Applicant knowingly and willfully provided false material information to DoD during the clearance screening process. In so doing the Applicant violated the felony criminal provisions of 18 USC 1001.

Mitigation.

Four of the Applicant's current supervisors supplied letters in support of the Applicant. They are attached to his Answer to the SOR. They include the Chief of Current Operations and Network Manager, and a Senior Network Engineer, who both work for the Armed Service the Applicant supports. Two others are from the Executive Director (a retired Army Colonel) and the Assistant Executive Director for the Applicant's employer. Each of these people find the Applicant to be a mature person, who has "clearly demonstrated a high level of responsibility" in the time he has worked for his employer.

The retired Colonel states:

I understand that there are issues with law enforcement in his youth and young adulthood, as well as problems with the information provided with his original security clearance paperwork. I strongly believe that those are a result of his youthful immaturity at the time of these events, subsequent chagrin, the fact that this has been his first experience with DoD, and the first time applying for a security clearance. I can say that he has been trustworthy in the over three years he has been associated with this enterprise.

**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)

Condition that could raise a security concern:

- (1) any drug abuse; [\(1\)](#)

Conditions that could mitigate security concerns:

- (1) the drug involvement was not recent;
- (3) a demonstrated intent not to abuse any drugs in the future;

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;

(5) a pattern of dishonesty or rule violations, including the violation of any written or recorded agreement made between the individual and the agency.

Conditions that could mitigate security concerns:

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

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.

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 acts of drug abuse, criminal conduct and falsification, 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 and engaged in drug related criminal conduct (Guidelines H and E); that he engaged in non-drug related criminal conduct (Guideline E); and that he intentionally made false material statements to DoD, in violation of a felony criminal statute (Guidelines E and J).

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. Under Paragraph 1 (Guideline H), the Applicant's drug use ended approximately eight years ago and there is no evidence of recurrence. Paragraph 1 and its subparagraphs are found for the Applicant.

The Applicant showed extremely poor judgment in not resolving his tickets in State A before moving to State B. He then compounded the problem by driving on an expired license and winding up with substantial fines to pay to two states. However, it has been approximately three years since the incidents and there is no evidence of subsequent problems. Subparagraphs 2.c., 2.d., 2.e., and 2.f. are found for the Applicant.

The Applicant's drug related arrests took place more than ten years ago. It is obvious that he has learned his lessons from these incidents. The adverse inference of these arrests has been mitigated by time and subparagraph 3.a. 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. The Applicant knew, or should have known, that his drug use after December 1991 fell within the parameters of question 27, and that his criminal history fell within the parameters of question 24. (2) The Applicant's explanations for failing to give correct answers to these questions have been examined and are found wanting. They are not credible given his obvious intelligence and background. Guidelines E and J are found against the Applicant.

The laudatory letters of recommendation from his superiors have been considered. It is noted that the most recent conduct by the Applicant occurred in 1998, when he falsified his questionnaire. However, it is also true that the Applicant did not reveal the truth until his March 2002 interview by the DSS. Because he has not yet been completely forthcoming concerning how these falsifications took place, it cannot be said that he is eligible for a clearance at this time.

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 2 and 3 of the Government's Statement of Reasons. As set forth above, Paragraph 1 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: For the Applicant.

Subparagraph 1.a.: For the Applicant.

Subparagraph 1.b.: For the Applicant.

Subparagraph 1.c.: For the Applicant.

Subparagraph 1.d.: For the Applicant.

Subparagraph 1.e.: For the Applicant.

Subparagraph 1.f.: For the Applicant.

Paragraph 2: Against the Applicant.

Subparagraph 2.a.: Against the Applicant.

Subparagraph 2.b.: Against the Applicant.

Subparagraph 2.c.: For the Applicant.

Subparagraph 2.d.: For the Applicant.

Subparagraph 2.e.: For the Applicant.

Subparagraph 2.f.: For the Applicant.

Paragraph 3: Against the Applicant.

Subparagraph 3.a.: For the Applicant.

Subparagraph 3.b.: 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.

Wilford H. Ross

Administrative Judge

1. Under the provisions of 10 U.S.C. 986, any person who is an unlawful user of, or is addicted to, a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), may not be granted or have renewed their access to classified information.

2. As requested by Department Counsel in footnote 5 of the FORM, I have not considered the arrests set forth in

subparagraphs 1.d., 1.e. and 1.f. in making my decision on subparagraph 2.a. of the SOR.