

DATE: February 12, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-15891

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's drug use from 1974 until 1998, after having been granted a security clearance in 1981, and his material falsification on his security clearance application have not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

**STATEMENT OF THE CASE**

On June 7, 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, (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 August 9, 2002, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on October 28, 2002 and a notice of hearing was issued on November 18, 2002, setting the hearing for December 17, 2002. At the hearing the Government presented eight exhibits. The Applicant presented two exhibits. The Applicant also testified on his own behalf. The official transcript (Tr.) was received on December 27, 2002.

**FINDINGS OF FACT**

The Applicant is 47 years old and married. He is employed as a Financial Control Analyst by a defense contractor and 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 1974, at the age of nineteen. He last used it in February 1998 at a musical event. He used it about once a year or one time every two years. The Applicant first applied for a security clearance in October 1981, and was granted a security clearance shortly thereafter. He states that he no longer uses marijuana, but he continues to associate with some people who use it. (*See*, Government Exhibit 2).

The Applicant contends that during the periods he actually used the marijuana, he was not working in a classified program and did not hold a security clearance. The Applicant submitted a copy of a Personnel Security Clearance Change Notification indicating that his active clearance was terminated November 1995. (*See*, Applicant's Exhibit B).

Paragraph 2 (Guideline F - Financial Considerations) The Government alleges that the Applicant is ineligible for clearance because he is financially overextended and at risk to engage in illegal acts to generate funds.

The Applicant was indebted to a mortgage company in the amount of \$1,878.00. Although his credit reports still reflect that the debt is owing, the Applicant has paid off the debt. (*See*, Applicant's Exhibit A).

Paragraph 3 (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 4, 1999. In response to question 28, which asked, "Have you ever illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a position directly immediately affecting public safety?" the Applicant answered "No" to the question. (*See*, Government's Exhibit 1). He claims that he was not in a sensitive position when he used the marijuana, and he believed he did not hold a security clearance during those periods.

## **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.

### Guideline F (Financial Considerations)

Condition that could raise a security concern:

1. A history of not meeting financial obligations;

Condition that could mitigate security concerns include:

6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

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 status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Conditions that could mitigate a security concern:

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 criminal conduct, financial irresponsibility and 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 engaged in drug abuse (Guideline H) and falsified his security clearance application (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 failed to introduce persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

The Applicant's history of drug abuse, from 1974 until 1998, although intermitted, extended over a period of twenty eight years, and shows extremely poor judgment on his part. After being granted a security clearance in 1981, he continued to use illegal drugs. He knew illegal drug use was prohibited by the Department of Defense, but ignored the policy. His argument that he did not hold a security clearance at the time he used the marijuana is irrelevant. There is simply no excuse for his illegal conduct, that was not isolated, but extended over a long period of time.

Equally as troubling is the fact that the Applicant intentionally concealed material information from the Government on his security clearance application. The Applicant knew or should have known that he had used marijuana after being granted a security clearance. Accordingly, I find against the Applicant under Guideline E (Personal Conduct).

On the other hand, the Applicant demonstrates good judgment in the area of personal finances. He has paid off his delinquent debt, is current on all of his other financial obligations and he has good credit. Accordingly, I find for the Applicant under Guideline F (Financial Considerations).

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 and 3 of the Government's Statement of Reasons. Paragraph 2 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.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

Paragraph 2: For the Applicant.

Subpara. 2.a.: For 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