

DATE: May 2, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-21300

DECISION OF ADMINISTRATIVE JUDGE

BURT SMITH

APPEARANCES

FOR GOVERNMENT

Henry Lazzaro, Esq., Department Counsel

Kathryn MacKinnon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

On three occasions Applicant knowingly provided false information about his history of drug usage, and he failed to voluntarily correct his falsifications in a timely or prompt manner, causing doubt as to his honesty in a security environment. Clearance is denied.

STATEMENT OF THE CASE

On January 3, 2002 the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6 (Directive) dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons why DOHA could not make a 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 granted, continued, denied or revoked.

The Applicant responded to the SOR in a written answer dated January 29, 2002, in which he requested a hearing. The case was originally assigned to another Administrative Judge, and it was transferred to the undersigned on March 14, 2002. On March 15, 2002, a Notice of Hearing was issued scheduling the hearing on April 9, 2002. At the hearing, the Government introduced four documentary exhibits (hereafter Gov. Exs. 1 - 4) and the Applicant introduced three documentary exhibits (hereafter App. Exs. A - C) in addition to his personal testimony. The official transcript was received by the undersigned on April 15, 2002.

FINDINGS OF FACT

The Applicant is twenty-seven years old and unmarried, and he holds a bachelor's degree in physics. He is employed by a defense contractor as an associate, and he seeks a DoD security clearance in connection with his defense-related

employment.

In the SOR, the Government alleges the Applicant is ineligible for clearance because he intentionally furnished false material information about his personal background during the clearance screening process. The following findings of fact are entered as to the Government's allegations in the SOR.

Paragraph 1 (Guideline E - Personal Conduct). The Government alleges Applicant made numerous false material statements about the true extent of his past drug and alcohol usage.

With respect to subparas. 1.a. through 1.c. of the SOR, pertaining to Applicant's descriptions of his past drug use, the Applicant candidly admits the Government's allegations are true and correct as stated in the SOR. There being no controverted facts at issue in these subparagraphs, it is necessary only to summarize what the Government alleges and Applicant admits.

On October 30, 1997 the Applicant completed an SF86 security questionnaire as part of his application for clearance with Agency A, a non-DoD federal organization. (Applicant's background investigation was conducted by the Defense Investigative Service DIS, now the Defense Security Service DSS, on behalf of Agency A.). Question 24 of the SF86 form asked Applicant to reveal his past use of illegal substances. Applicant answered he used marijuana about 50 times during September 1994 to April 1997 when he was a college student. (Gov. Ex. 1.)

As discussed further below, Applicant admitted much later that when he was in college he used marijuana about 750 times, as well as the experimental or occasional use of LSD, illegal mushrooms, hashish, morphine, percocet, demerol, and "roofies." Thus Applicant's answers on the SF 86 of October 30, 1997 were intentionally false.

On November 24, 1997, about a month after Applicant completed the SF86, he furnished DIS a sworn statement in which he admitted to a greater use of marijuana in college, about 150 times. (Gov. Ex. 2.) He also admitted to the use of illegal mushrooms and LSD a few times each. He denied the use of any other hard drugs. Therefore, Applicant again minimized his past illegal drug usage. However, he truthfully conceded he abused alcohol on a regular basis during college.

In December 1997 Applicant was interviewed by a DIS agent as part of a pre-polygraph procedure. Applicant admits that during this interview he provided false information to the agent concerning his past drug usage. (For purposes of this decision, the outcome of the polygraph examination is not relevant.) Applicant claims, but does not prove, that in January 1988 he voluntarily confessed to the DIS agent the full truth of his past drug usage.

At the completion of Applicant's background investigation, DIS turned over its factual findings to Agency A for a decision on Applicant's request for clearance. On August 5, 1998, Agency A denied Applicant's request for clearance. Applicant appealed the decision to a three-person panel of Agency A, but the panel sustained the initial denial.

At a later date, Applicant requested a DoD security clearance in connection with his employment in the defense contracting sector. On September 20, 1999 Applicant was interviewed by a DIS agent, and he provided a sworn statement which explains in detail his drug and alcohol use while in college and thereafter. (Gov. Ex. 4.) There is no reason to believe Applicant was less than truthful in this statement. In a subsequent statement, dated February 27, 2001, Applicant admits that his three 1997 statements to DIS were false. (Gov.Ex. 4.)

For purposes of evaluating Applicant's mitigating evidence, an issue arises as to when he first made a voluntary confession of his falsehoods. As noted earlier, Applicant claims he made a full disclosure of his previous drug usage in an informal statement he furnished to the polygraph agent in December 1997. However, there is no documentary evidence of this informal statement in the record, and Applicant does not produce it as part of his case. The more probable date of Applicant's first complete disclosure of his previous drug use is September 20, 1999 when he furnished a sworn statement to a DIS investigative agent. (Gov. Ex. 3.)

Although Applicant admits to the Government's allegations in subparagraphs 1.a. through 1.c. pertaining to false statements about his past drug usage, he does not admit to making false statements about his past alcohol abuse, as alleged in subparagraph 1.d. In this subparagraph the Government alleges that during Applicant's December 1997

polygraph interview he falsely claimed his alcohol consumption was "moderate" and he only drank on weekends. According to the Government, Applicant regularly drank to intoxication.

Applicant strongly denies the accusation that he falsely described his drinking as moderate. As proof of his honest description of his drinking he points to the sworn statement he provided DIS one month earlier in which he conceded he abused alcohol on a regular basis during college and occasionally after he graduated in May 1997. (Gov. Ex. 2.) Applicant's evidence of his truthfulness on this issue is persuasive. His sworn statement of November 24, 1997 contains a full and credible description of his past alcohol abuse.

In his written answer and in his testimony the Applicant does not deny that he knowingly and willfully furnished false information about his past drug usage, as alleged in the SOR. Applicant testified he provided false statements because he did not want to disappoint his parents and also he was afraid of losing his employment at the time.

At the hearing, Applicant presented documentary evidence of his present trustworthiness and reliability in the workplace. He furnished letters of reference from his direct supervisor and two other persons who know him well. His supervisor states Applicant demonstrates "high standards of integrity, professionalism, excellence, and trust." An active duty military officer states "I am quite impressed by [Applicant's] honesty, integrity and commitment to our agency's success." A senior-level federal employee states the Applicant is "of good moral and ethical character." (App. Exs. A, B, and C.)

In his testimony Applicant admitted he made serious mistakes in judgment by trying to hide or minimize his past drug usage on several occasions when he was called upon to tell the truth. Applicant testified credibly that he accepts responsibility for his poor decisions and he will not commit the same acts of dishonesty in the future.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. The guidelines are divided into those that may be considered in deciding whether to deny or revoke an Applicant's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's request for access to classified information (Mitigating Conditions).

Based upon a consideration of the entire record, I find the following adjudicative guidelines have application in this case

Guideline E - Personal Conduct.

Conditions that could raise a security concern and may be disqualifying include:

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, including violation of any written or recorded agreement made between the individual and the agency.

Conditions that could mitigate security concerns include:

(None has application.)

The whole person concept. In addition to these guidelines the Directive provides in Para. E2.2. that under the "whole person concept" the Administrative Judge shall also consider (1) the nature, extent and seriousness of the conduct; (2)

the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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 a day. The Government is therefore appropriately concerned where reliable information indicates that an Applicant for clearance may be involved in repeated instances of personal misconduct, whether on duty or off, that demonstrates dishonesty, poor judgment, or unreliability. These personal characteristics, if carried over to a security environment, might result in a loss of classified information.

In DOHA cases the Applicant bears the ultimate burden of proving that it is clearly consistent with the national interest to grant him or her a security clearance. Procedurally, the Government must first prove all controverted facts that might tend to demonstrate Applicant is ineligible for clearance. Once this burden is met, the Applicant must overcome the Government's case by persuasive evidence in refutation, mitigation, or changed circumstances. The Directive provides, however, that "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." (Directive, Para. E2.2.2.) Thus, the Applicant's burden is a heavy one.

In this case the Applicant knowingly and willfully provided false material information about his past drug use on October 30, 1997, when he completed a security questionnaire under a certification of truth. In this regard, the Applicant's omissions and falsifications were seriously deceptive. Only about a month later, Applicant repeated his false statements in a signed, sworn statement. A month after that occurred, Applicant again lied about his previous drug involvement when he was interviewed by a federal polygraph examiner.

Although Applicant claims he made a full and voluntary confession of his falsehoods on or about January 1998, the record does not support his claim. It is more likely that Applicant first confessed his dishonest conduct on September 20, 1999, two years after he made his first false statements. With this in mind it must be concluded that Applicant's efforts to voluntarily recant his numerous and repeated falsehoods were relatively recent.

Referring to the adjudication policies applicable to this case, Applicant deliberately concealed the truth of his past drug usage when he completed the personnel security questionnaire and a sworn statement. (Disqualifying Condition No. 2.) He again provided false information to an official investigator during a pre-polygraph interview. (Disqualifying Condition No 3.) These intentional acts demonstrate a pattern of dishonesty. (Disqualifying Condition No. 5.)

The whole person concept has also been considered. Applicant's misconduct was serious, and he knowingly committed wrongful acts. He voluntarily repeated his false statements although he was a college graduate with a mature understanding of his responsibilities. His motivation (family embarrassment and job protection) did not justify his dishonesty.

With respect to Applicant's potential rehabilitation and the likelihood of continuation or recurrence, consideration is given to his character references from reputable persons in the workplace who know him well. It is clear Applicant's supervisor and his co-workers believe he is trustworthy and an asset to the defense industry. Their strong support provides a basis to conclude that Applicant has good potential for rehabilitation. Furthermore, Applicant persuasively establishes that he made no false statements regarding his abuse of alcohol, as alleged in subpara. 1.d. of the SOR.

However, the repeated and deliberate nature of Applicant's falsehoods about his past drug usage weighs against a grant of clearance at this time. The recency of Applicant's offenses causes doubt as to whether Applicant has yet developed a high degree of insight, understanding and appreciation for the failure of his judgment.

This decision should not be construed to mean Applicant will not or can not become eligible for clearance in the future. Since admitting his unacceptable conduct, Applicant has given much serious thought to his errors in judgment. He has made a sincere effort to regain the trust of the Government, his employer, and those around him in the defense industry. Should the Applicant become eligible to re-apply for a security clearance in the future, he may then demonstrate he is

worthy of the privilege of access to classified information. At this time, however, it is too soon to conclude that he meets the high standards established by the Government.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1. Guideline E: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant.

Subparagraph 1.b.: Against the Applicant.

Subparagraph 1.c.: Against the Applicant.

Subparagraph 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 Applicant's request for a security clearance.

Burt Smith

Administrative Judge