

DATE: March 3, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-24030

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's deliberate attempt to conceal material information on his security clearance application of February 2001, concerning the revocation of his security clearance in February 1988, has not been mitigated. Adverse inference is not overcome. Clearance is denied.

STATEMENT OF THE CASE

On July 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 August 2, 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 August 20, 2002. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on a date unknown, and he submitted a reply dated September 24, 2002.

The case was assigned to the undersigned for resolution on October 17, 2002.

FINDINGS OF FACT

The Applicant is 44 years old. He is employed as an electronic technician 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 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 February 22, 2001. In response to question 32, which asked, "To your knowledge have you ever had a clearance or access authorization denied, suspended, or revoked, or have you ever been debarred from government employment?" The Applicant answered "No". (See, Government Item 4). This was a false statement. The truth is that the Applicant's security clearance was revoked on February 5, 1988.

The Applicant admits that he responded to the question by answering "No", but that he was not aware that his security clearance was ever denied, suspended or revoked. (See, Government Item 2). In his response to the FORM dated September 24, 2002, the Applicant explained that during an Army investigation he was called into the commander's office and told that he was going to temporarily suspend his security clearance pending the investigation. The Applicant submits that he changed duty stations from Italy to New York before a final determination on his security clearance was made and it was never forwarded to him at his new duty station. He states that he never intended to deceive anyone about his situation, and that the situation will not happen again, now that he has the documentation indicating that his security clearance was revoked.

The Applicant's Army records contain information indicating that the Applicant's security clearance was revoked in February 5, 1988, by the United States Army. A letter from the Applicant addressed to the Commander of the United States Army Central Clearance Facility at Fort George G. Meade, Maryland dated October 26, 1987, further indicates that the Applicant, at that time, requested that his security clearance be reinstated. (See, Government Item 5).

A letter from the Chief of the Adjudications Division, dated September 1, 1987, entitled "Intent to Revoke Security Clearance" also indicates that at that time, the Applicant was notified that his access was suspended until a final determination had been made. (See, Government Item 5). Another letter, undated, from the United States Army Central Personnel Security Clearance Facility, entitled "Reconsideration of Revocation of Security Clearance" states that the revocation of the Applicant's security clearance was affirmed.

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 a material fact in 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 not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

The Applicant has not been frank and truthful with the Government concerning his answer to question 32 on his security application regarding the revocation of his prior security clearance. I have reviewed the Applicant's excuses for not providing truthful information to the Government on his application, and do not find them credible. The Applicant knew or should have known that his security clearance was revoked in 1988 for misconduct during his military career. He also received an Article 15 for the related misconduct.

Under the circumstances I have no choice other than to find against the Applicant concerning his attempt to conceal information from the Government on his application.

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. Because false or incomplete information given in the SF 86 is capable of affecting the way in which government personnel perform their official functions, the Applicant has not demonstrated that he is sufficiently 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 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.

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