

DATE: February 13, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-24318

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's criminal history involving sixteen separate charges and convictions that occurred between 1978 and 1999, his attempt to conceal material information on his security clearance application, and his history of alcohol abuse have not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

STATEMENT OF THE CASE

On February 6, 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 March 20, 2002, in which he originally requested an administrative decision without a hearing. The Applicant subsequently changed his mind, and on September 27, 2002, he requested a hearing before a DOHA Administrative Judge. This case was transferred to the undersigned Administrative Judge on October 16, 2002. A notice of hearing was issued on October 29, 2002. A hearing was held on November 7, 2002, at which the Government presented twenty-two exhibits. The Applicant presented nine exhibits and testified on his own behalf. The Applicant also submitted two Post Hearing exhibits. The official transcript (Tr.) was received on November 22, 2002.

FINDINGS OF FACT

The Applicant is 43 years old. He is employed as a Instruction Mechanic by a defense contractor and is seeking to retain a security clearance in connection with his employment.

The Government opposes the Applicant's request for a continued security clearance, on the basis of allegations set forth in the attached Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and Guideline in the SOR:

Paragraph 1 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in criminal conduct.

The Applicant was arrested on sixteen separate occasions for alcohol and/or drug related criminal activity between May 1978 and September 1997 as set forth below.

The Applicant was first arrested in May 1978 and charged with 1) Resisting Arrest, 2) Battery, 3) Assault, 4) Reckless Driving 5) Minor in Possession of Alcohol, and 6) Failure to Obey Traffic Officer.

In December 1982, he was again arrested and charged with Driving Under the Influence of Alcohol.

In January 1983, the Applicant was arrested and charged with (1) Possession of a Controlled Substance (phencyclidine), 2) Under the Influence of a Controlled Substance, 3) Public Intoxication, and 4) Under the Influence of a Controlled Substance.

In September 1983, the Applicant was again arrested and charged with Under the Influence of a Controlled Substance (phencyclidine).

In May 1984, the Applicant was again arrested and charged with 1) Possession of a Controlled Substance, and 2) Under the Influence of a Controlled Substance.

In June 1984, the Applicant was again arrested and charged with 1) Possession of a Controlled Substance, 2) Under the Influence of a Controlled Substance, and 3) Resisting a Peace Officer.

In February 1985, the Applicant was again arrested and charged with Driving Under the Influence of Alcohol, and 2) Under the Influence of a Controlled Substance (phencyclidine).

In March 1985, the Applicant was again arrested and charged with 1) Driving Under the Influence, 2) Driving Without a Valid License, and 3) Under the Influence of a Controlled Substance (phencyclidine).

In July 1985, the Applicant and again arrested and charged with Under the Influence of a Controlled Substance (phencyclidine). The Applicant was arrested a second time in July 1985, and charged with Driving Under th Influence with prior convictions, 2) Under the Influence of a Controlled Substance and, 3) Driving With a Suspended License.

In January 1986, the Applicant was again arrested and charged with Under the Influence of a Controlled Substance (phencyclidine).

In January 1987, the Applicant was again arrested and charged with Under the Influence of a Controlled Substance (phencyclidine).

In April 1987, the Applicant was again arrested and charged with (1) Under the Influence of a Controlled Substance (phencyclidine), and (2) Resisting a Peace Officer.

In September 1987, the Applicant was again arrested and charged with 1) Possession of a Controlled Substance (phencyclidine), a felony, 2) Battery Upon an Officer and Emergency Personnel, and 3) Under the Influence of a Controlled Substance.

In September 1992, the Applicant was again arrested and charged with 1) Driving Under the Influence of Alcohol or Drugs, second violation, 2) Under the Influence of a Controlled Substance (phencyclidine), and (3) Driving when Privilege Suspended for Prior DUI Conviction, second violation.

In September 1997, the Applicant was arrested and charged with 1) Operating a Water Craft Under the Influence, 2)

Operating with a BAC over .10%, and (3) Excess Wake in No Wake Zone.

The Applicant was cited in June 1999 and charged with Driving with an Open Container (Beer).

Following each of the above listed arrests, the Applicant was either found guilty, pled guilty or pled nolo contendere to at least one or more of the charges against him. On each occasion, he was convicted of some criminal offense, and received a fine, jail time, or both. On several occasions, his drivers license was suspended or revoked, and he was placed on unsupervised probation at one time for up to three years.

Paragraph 2 (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 on May 8, 1998. In response to question 23(d) which asked, "Have you ever been charged with or convicted of any offenses(s) related to alcohol or drugs? ", the Applicant answered "Yes, and listed that he had been arrested in December 1989 for DUI and June 1997 for an Open Container." (*See*, Government Exhibit 5, Question 23(d)). The Applicant failed to list the other sixteen charges and convictions set forth in allegations 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.i., 1.j., 1.k., 1.l., 1.m., 1.n., 1.o., and 1.p. of the SOR. The Applicant explained that because he believed he had reported this information to the Government during an earlier investigation, he did not know he had to repeat himself again. (*See*, Applicant's Answer to the SOR).

The same application required the Applicant to indicate whether since the age of 16 or in the last seven years, which ever is shorter, has he ever illegally used any controlled substance. The Applicant answered "No". (*See*, Government Exhibit 5, Question 24(a)). The Applicant failed to list the fact that he has used PCP (Phencyclidine). The Applicant stated that he simply miscalculated the date of his arrest in 1992 and did not realize that he should included this arrest. (*See*, Applicant's Answer to SOR).

The same application also required the Applicant to indicate whether he has 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 and immediately affecting the public safety. The Applicant answered "No". (*See*, Government Exhibit 5, Question 24(b)). The Applicant failed to reveal the fact that in 1992 he was granted a security clearance from the Department of Defense and that he had used PCP while holding this security clearance. The Applicant explained that he misunderstood the question. (*See*, Applicant's Answer to SOR).

The Applicant testified that he did not intentionally attempt to conceal, omit or falsify his security clearance application. (Tr. pp. 40-43). He figured that since the Government already had information he had provided on a previous National Security questionnaire, there was no need for him to repeat himself.

I find that the Applicant's responses to questions 23(d), 24(a), and 24(b), on his security clearance application of May 8, 1998, were intentional and deliberate. I do not find the Applicant credible. There is no other reasonable excuse for his inaccurate responses. Accordingly, I find that the Applicant attempted to intentionally conceal material information from the Government on his security clearance application.

Paragraph 3 (Guideline G - Alcohol Consumption). The Government alleges that the Applicant is ineligible for clearance because he abuses intoxicants.

The Applicant has admitted to a pattern of abusive drinking, at times to the point of intoxication, from approximately 1970 to at least December 1999. Although he has been arrested on at least ten separate occasions for alcohol related criminal violations, involving his excessive use of alcohol, he believes that alcohol has never been a serious problem. The Applicant continues to consume alcohol.

In his sworn statement to DSS dated December 9, 1998, the Applicant stated:

"I do not consider myself an alcoholic. Other than what was discussed in my prior security investigations, I have never considered taking any alcohol treatment programs or counseling, [not] *sic* has anyone suggested that I do. Alcohol has never been a serious problem - it has never caused any problems with work, never resulted in any violence, I have never

been criticized for my drinking habits; and I have never felt that I should cut down on my drinking. I only drink beers, usually with my brothers and father-in-law. I do not get rowdy or obnoxious when drinking. Alcohol use has never resulted in any financial hardships. (*See*, Government Exhibit 3).

Paragraph 4 (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 the county district attorney's office for delinquent child support in the amount of approximately \$25,000.00 since May 1999. The Applicant indicated that he has been paying this debt through a wage assignment in the amount of \$325.00 per month. He has currently reduced the amount owed to approximately \$11,000.00. He intends to continue paying the debt until it is completely resolved. (*See*, Applicant's Post Hearing Exhibit).

Mitigation.

A letter from the Manager of Operations dated November 2002, indicates that the Applicant is considered extremely reliable on the job. His work performance has always been above average. He is considered is a critical link to the success of their program.

(*See*, Applicant's Exhibit B).

A letter from the Department Supervisor dated February 1982, indicates that the Applicant has shown an ability to assume tasks with a sense of challenge. He has shown the best in leadership, team motivation and resourcefulness. He is considered the prime example of a top notch and dedicated employee and a very valuable asset to the company. (*See*, Applicant's Exhibit G).

Other letters of commendation submitted on the Applicant's behalf indicate that he is an outstanding employee who has performed tasks above and beyond his classification. (*See*, Applicant's Exhibits B and F).

The Applicant has also received various awards from his employer including the "Employee of the Month Award" in September 1994, and an "Instant Recognition Award" in August 2002. (*See*, Applicant's Exhibits C, D, E and H).

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 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;
 - A pattern of dishonesty or rule violations;

Conditions that could mitigate security concerns:

None.

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.

Condition that could mitigate security concerns:

None.

Guideline G (Alcohol Consumption)

Conditions that could raise a security concern:

1. alcohol-related incidents away from work, such as driving under the influence
4. habitual or binge consumption of alcohol to the point of impaired judgement.

Conditions that could mitigate security concerns:

None.

Guideline F (Financial Considerations)

Conditions that could raise a security concern:

1. A history of not meeting financial obligations;
3. Inability or unwillingness to satisfy debts.

Conditions that could mitigate security concerns include:

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

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 a history of criminal conduct, repeated instances of dishonesty, alcohol abuse and financial irresponsibility, which demonstrate 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 or her a security clearance.

In this case the Government has met its initial burden of proving by evidence that the Applicant has engaged in acts of criminal conduct (Guideline J) that he has falsified his security clearance application (Guideline E), that he has abused alcohol (Guideline G), and that he has been financially irresponsible (Guideline F). 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's criminal record speaks for itself. The evidence shows that from 1978 until 1999 the Applicant has been charged, arrested and/or cited for sixteen separate times for alcohol or drug related criminal offenses. The criminal conduct is consistent, continuous, recent and serious, and cannot be ignored. The Applicant has spent almost two years in jail as a result of his criminal behavior. The most recent violation occurred in June 1999, when the Applicant was charged with Driving With an Open Container. Although this charge was ultimately dismissed, given his extensive criminal history, I cannot find at this time, that the Applicant is sufficiently rehabilitated in the area of criminal conduct to warrant the granting of a security clearance. Accordingly, Guideline J (Criminal Conduct) is found against the Applicant.

The evidence further shows that the Applicant attempted to conceal material information from the Government on his security clearance application. There is no reasonable excuse as to why he did not answer the questions accurately. Accordingly, Guideline E (Personal Conduct) is found against for the Applicant.

Strong evidence suggests that the Applicant has abused alcohol from at least 1970 until December 1999. The numerous alcohol related incidents, the most recent of which occurred in June 1999, indicates that the Applicant was then still abusing alcohol. Given the fact that he continues to consume alcohol, and has provided no evidence to the contrary, given his past alcohol related history, I cannot find that he has sufficiently rehabilitated himself in this area of concern. Accordingly, Guideline G (Alcohol Consumption) is found against the Applicant.

With respect to the allegation concerning the Applicant's financial indebtedness, I find for the Applicant. He has made a good faith effort to repay his delinquent child support and since May 1999, he has substantially reduced this debt. Accordingly, Guideline F (Financial Considerations) is found for the Applicant.

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, 2 and 3 of the Government's Statement of Reasons. As stated above, Paragraph 4 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.

Subpara. 1.c.: Against the Applicant.

Subpara. 1.d.: Against the Applicant.

Subpara. 1.e.: Against the Applicant.

Subpara. 1.f.: Against the Applicant.

Subpara. 1.g.: Against the Applicant.

Subpara. 1.h.: Against the Applicant.

Subpara. 1.i.: Against the Applicant.

Subpara. 1.j.: Against the Applicant.

Subpara. 1.k.: Against the Applicant.

Subpara. 1.l.: Against the Applicant.

Subpara. 1.m.: Against the Applicant.

Subpara. 1.n.: Against the Applicant.

Subpara. 1.o.: Against the Applicant.

Subpara. 1.p.: Against the Applicant.

Subpara. 1.q.: Against the Applicant.

Subpara. 1.r.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: Against the Applicant.

Subpara. 2.c.: Against the Applicant.

Paragraph 3: Against the Applicant.

Subpara. 3.a.: Against the Applicant.

Subpara. 3.b.: Against the Applicant.

Paragraph 4: For the Applicant.

Subpara. 4.a.: 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