

DATE: February 13, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-26712

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Marc Curry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant falsified a Security Clearance Application in 2000 by not admitting drug and alcohol related arrests, as well as his cocaine use in the 1990s. Adverse inference is not overcome. Clearance is denied.

STATEMENT OF THE CASE

On August 16, 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 September 4, 2002, and requested a hearing. The case was received by the undersigned on October 31, 2002, and a Notice of Hearing was issued on October 31, 2002.

A hearing was held on November 14, 2002, at which the Government presented three documentary exhibits. Testimony was taken from the Applicant, who called four additional witnesses. The transcript was received on November 22, 2002.

FINDINGS OF FACT

The Applicant is 40, married and has a Doctorate. He is employed by a defense contractor, 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 guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (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 February 10, 2000, the Applicant completed an official DoD questionnaire in which he stated that he had been charged and convicted once in 1992 for an alcohol related offense, but had no other alcohol or drug related charges or convictions. (Government Exhibit 1, question 24.) This statement was a false answer to a relevant and material question relating to the Applicant's previous criminal history. In fact, he had two other alcohol related charges in 1983 and 1989. In addition, he had been charged with possession of drug paraphernalia in December 1995.

On the same February 10, 2000, questionnaire the Applicant stated that he had not used any illegal substances, such as cocaine, within the past seven years. (Government Exhibit 1, Question 27.) This statement was also a false answer to a relevant and material question relating to the Applicant's drug abuse history. In fact, the Applicant used cocaine with varying frequency from 1991 through early 1996.

The Applicant was subsequently interviewed by a Special Agent of the Defense Security Service (DSS) in February 2001. In a signed, sworn statement dated February 26, 2001 (Government Exhibit 2), the Applicant discussed his drug use in detail.

The Applicant stated concerning the falsification of his drug information, "I regret withholding this information on my job application but I was sure that I would never get the job or get security clearance with such a history. I also felt that these were private matters and would not possibly have any effect on my loyalty to our country or to [my employer]." (Government Exhibit 2 at page 2. *See also*, Transcript at 55-56, 72.)

During the hearing, the Applicant's supervisor testified that the Applicant talked to him about the questionnaire before filling it out. The supervisor stated that he urged the Applicant to tell everything about his past. (Transcript at 27-28.) The Applicant confirmed the substance of this conversation in his own testimony. (Transcript at 71.)

Mitigation.

The Applicant's pastor, wife, mother and supervisor all testified on his behalf. Their testimony indicates that the Applicant did have a serious cocaine problem which, through hard work and the help of his family, he has overcome.

The Applicant testified that he is not the same person who used cocaine in the 1990s, nor is he the same person who filled out the form in 2000. He understands the necessity for security and would not falsify such documents in the future.

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 guideline. 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 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 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 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 intentionally made false material statements to DoD (Guideline E).

The Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case against him. 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. It is particularly egregious in this case that the Applicant spoke to his supervisor about his concerns, the supervisor urged the Applicant to be truthful, and the Applicant still falsified the questionnaire in two specific areas. Guideline E is found against the Applicant.

The Applicant's efforts at reform are noted. The testimony of his witnesses was considered very carefully. Under the particular circumstances of this case, this evidence does not overcome the adverse information that has been presented by the Government.

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 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.

Subparagraphs 1.a. and 1.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