

DATE: May 15, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-26944

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's use, possession and purchase of illegal drugs, including marijuana, cocaine, LSD, and methamphetamine, some of which occurred while working for a defense contractor has not been mitigated. His deliberate attempt to conceal his drug involvement on his security clearance application, has also not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On September 23, 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 and modified, 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 his clearance should be denied or revoked.

The Applicant responded to the SOR in writing on October 22, 2002, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on January 3, 2003. A notice of hearing was issued on February 26, 2003, scheduling the hearing for March 11, 2002. The matter was continued and rescheduled for April 22, 2002. At the hearing the Government presented two exhibits. The Applicant presented two exhibits. The Applicant called one witness and he testified on his own behalf. The official transcript (Tr.) was received on April 30, 2003.

FINDINGS OF FACT

The Applicant is 32 years old, married, and has a high school diploma and some college. He is employed as a Network Engineer for 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 1981, when he was in the sixth grade. He used it sporadically from 1981 until 1986. In 1986 or 1987, he began using marijuana on a more regular basis, usually three or four times a week which continued until January 1997. Although most of the time his friends gave him the marijuana he used, he also purchased it several times between 1993 and 1997. The Applicant stopped using marijuana in January 1997. He states that he has not used marijuana since then, and he has no intentions of ever using it or any other illegal drug again.

The Applicant has also used LSD, cocaine, and methamphetamine. He used LSD, approximately six times from 1984 to 1985. He used cocaine, three to four times, from 1986 to 1987. He used methamphetamine about three or four times a week from 1986 to 1987, until he obtained his employment with a defense contractor in May 1988. The Applicant did not use methamphetamine again until December 1988. From December 1988 until sometime in 1992, he used methamphetamine about once or twice monthly. On some occasions, he purchased it from friends. In 1992, a close friend of the Applicant's was arrested for distribution of methamphetamine. The Applicant was interviewed by NIS at his place of employment concerning his friend's methamphetamine involvement. The Applicant was not arrested or charged with anything, but this event helped him decide to stop using methamphetamine altogether. The Applicant states that he has not used methamphetamine since 1992.

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 (SF form 86) dated February 19, 2000. In response to question 27, which asked, "since the age of sixteen or in the last seven years, whichever is shorter, have you illegally used any controlled substance?" the Applicant answered "no". He failed to disclose his use of marijuana. (*See*, Government Exhibit 1, Question 27). The Applicant stated that he was truthfully embarrassed and ashamed of his illegal drug history. He tried to conceal this information from the Government in fear that it would jeopardize his chances of obtaining a security clearance and ultimately effect his job. (Tr. p. 53).

The same security clearance application, Question 29, asked the Applicant if, "In the last seven years, have you ever been involved in the illegal purchase, manufacture, trafficking, production, or sale of any narcotic?" the Applicant answered "no". He failed to disclose his use and purchase of marijuana. (*See*, Government Exhibit 1, Question 29). Again the Applicant was ashamed of his illegal drug involvement and tried to conceal it from the Government.

Mitigation.

A friend of the Applicant, who is employed as a county prosecutor testified that the Applicant is a decent person, who is trustworthy, well respected, and a good role model for his children. He is also a hard worker and works effectively with other people.

Several letters of recommendation submitted on behalf of the Applicant are very favorable. Among those persons that support the Applicant are his manager, a prosecutor, an attorney, a teacher, and several retired military officers and other professional colleagues. The Applicant is considered to be a very dependable, loyal, honest individual who has continued to display a strong commitment to customer service, teamwork and excellence on the job. (*See*, Applicant's Exhibit A).

The Applicant's performance appraisals for the periods from 1998 through 2002, range from "highly effective" to "exceptional". (*See*, Applicant's Exhibit B).

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 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 guidelines established in the DOD Directive identify personal characteristics and conduct that 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 predicated 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. All 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 a reasonable and logical basis in the

evidence of record. The Judge cannot draw inferences or conclusions based on evidence that 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 drug abuse, which demonstrates poor judgment and 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 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.

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 evidence shows that the Applicant used marijuana intermittently, from 1981 to at least 1997, over a sixteen year period, nine years of which he was employed in the defense industry. This shows extremely poor judgment. Given the extent of his past marijuana use, that spans over many years, although he states that he has been drug free for six years, the extent of his drug involvement yields the great possibility that he could revert back to his old habits of marijuana use. Furthermore, the Applicant has not received any treatment or counseling for his drug abuse. The Applicant has stopped and started his marijuana use, and stopped and started his methamphetamine use in the past, and it is impossible at this point to have confidence in the Applicant's claim that he will not use it in the future. At the present time, the Applicant has obviously made the more responsible choice, to cease his illegal drug use altogether. However, more time in a drug free lifestyle is needed to ensure the Government that he will not return to drugs in the future. At this time, the Applicant does not meet any of the mitigating conditions or eligibility requirements for access to classified information. Accordingly, Guideline H (Drug Involvement), is found against the Applicant.

Furthermore, the Applicant admits that he was dishonest and embarrassed and ashamed of revealing his illegal drug involvement on his security clearance application and deliberately tried to conceal it. Consequently, the evidence shows that the Applicant cannot be trusted by the Government. I find that the Applicant intentionally failed to reveal this information to the Government.

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. This Applicant has not demonstrated that he is 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 and 2 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: For 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.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.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.

DARLENE LOKEY ANDERSON

Administrative Judge