

DATE: April 11, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-06165

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's history of illegal drug use, intentional falsifications in three sworn statements to DSS, and his intent to continue to use marijuana in the future disqualifies him from having a security clearance granted or renewed by the Department of Defense pursuant to 10 U.S.C. 986. Clearance is denied.

STATEMENT OF THE CASE

On December 17, 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 a date uncertain 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 February 11, 2003. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on February 25, 2003, and he submitted no reply.

The case was assigned to the undersigned for resolution on April 2, 2003.

FINDINGS OF FACT

The Applicant is 24 years old, and single. He is employed by a defense contractor as a Product Test Specialist, 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 1993 while a sophomore in high school. He continued to use it on a monthly basis until the Spring of 1994. From the Spring of 1994 until December 1999, he increased his use of marijuana to three to four times a day. From December 1999 until March 2000, he reduced his use of marijuana to about once a day. In March 2000, he stopped using marijuana altogether until November 2001. In November 2001, he started using marijuana again, this time about two to three times weekly. During the periods he has used marijuana, he purchased it for his use. He usually used marijuana while visiting a friend's residence. This use continued until at least November 2001. The Applicant has also sold marijuana on several occasions, acting as a middleman to obtain it for his friends, up until May 2001. He states that he intends to continue to use marijuana in the future. (Government Exhibits 3 and 9).

The Applicant used cocaine from 1997 to at least Spring 2001. He has also purchased cocaine and sold it until the fall of 1997. He used crank, or methamphetamine, from August 1997 until December 1997. He used acid or Lysergic acid diethylamide (LSD) two times in mid-1997. He also used psilocybin and/or psilocin (hallucinogenic mushrooms) once, during the summer of 1999.

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 provided three sworn statements to the Defense Security Service wherein he was not candid or truthful with the Government concerning his illegal drug involvement. In a sworn statement dated April 12, 2001, the Applicant stated that he last used marijuana in December 1999, and that he has also used cocaine and crank. He further stated that he has used no other illegal drugs besides those mentioned in his statement. This was a false statement. The Applicant had in fact resumed his use of marijuana in September 2000, two to three times per week. He had also used LSD on two occasions in 1997, and hallucinogenic mushrooms during the summer of 1999. (*See*, Government Exhibit 6).

The Applicant's second sworn statement to DSS dated November 5, 2001, stated that he had not used any illegal drugs since December 1999. This was also a false statement. The Applicant had in fact resumed his use of marijuana in September 2000, two to three times per week. He also used cocaine in the Spring of 2001. (*See*, Government Exhibit 7).

The Applicant's third sworn statement to DSS dated November 16, 2001, stated that he had not used any illegal drug since December 1999. This again was a false statement. The Applicant had in fact resumed his use of marijuana in September 2000, two to three times per week. He also used cocaine in the Spring of 2001. (*See*, Government Exhibit 8).

The Applicant admits that he has been dishonest during the DSS investigation by attempting to conceal the true extent of his marijuana use and other illegal drug involvement. He admits that he deliberately, knowingly and wilfully did not answer the drug related questions truthfully because he was concerned that his truthful answers would or could possibly affect his security clearance, which could cause him to lose his job. Consequently, the evidence proves that the Applicant has not been completely honest with the Government regarding his illegal drug involvement. I find that the Applicant deliberately failed to reveal this information to the Government.

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;

Condition that could mitigate security concerns:

None.

10 United States Code, Section 986 states that the Department of Defense may not grant or renew a security clearance for a person if the individual is an unlawful user of, or is addicted to, a controlled substance (as defined in Section 102 of the Controlled Substance Act (21 U.S.C. 802)).

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 drug abuse and 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 was, and still is, involved in the use of illegal drugs (Guideline H) and that he intentionally falsified material facts in three sworn statement before the DSS (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 evidence shows that the Applicant has used, purchased and sold marijuana and used a variety of other dangerous and illegal drugs, including cocaine, crank or methamphetamine, LSD and psilocybin mushrooms, beginning in 1993, and continuing until at least November 2001. He intends to continue using marijuana in the future. Accordingly, I find against the Applicant under Guideline H (Drug Involvement).

In addition, 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. In this case, the Applicant was intentionally dishonest regarding his illegal drugs use. The 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).

Furthermore, 10 United States Code, Section 986 disqualifies the Applicant from having a security clearance granted or renewed by the Department of Defense, because he is a drug user.

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: 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.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.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: Against the Applicant.

Subpara. 2.c.: 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