

DATE: September 8, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-29328

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

Timothy R. Garrison, Attorney At Law

**SYNOPSIS**

The Applicant's marijuana use from 1996 until 2001 has been mitigated. His deliberate falsification of his security clearance application concerning his marijuana use has not been mitigated. Clearance is denied.

**STATEMENT OF THE CASE**

On January 16, 2004, 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 clearance should be denied or revoked.

The Applicant responded to the SOR in writing on March 16, 2004, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on May 14, 2004. A notice of hearing was issued on June 23, 2004, scheduling the hearing for July 27, 2004. At the hearing the Government called one witness and presented two exhibits. The Applicant presented twenty-two exhibits, called four witnesses, and he testified on his own behalf. The official transcript (Tr.) was received on August 17, 2004.

**FINDINGS OF FACT**

The Applicant is 25 years old. He is employed by a defense contractor as a Electrical Engineer and is seeking to retain his 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 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 October 30, 2001. Question 27, of the application asked the Applicant if since the age of sixteen or in the last seven years, whichever is shorter, had he ever used any illegal substance. The Applicant answered, "NO". This was a false answer. The Applicant had in fact used marijuana over a five years period from 1996 until at least 2001, during his college years. The Applicant also confirmed that he falsified his first security clearance application in 1999 for the same reason he falsified his 2001 application. In response to a question as to why he lied in the first place, the Applicant stated,

First and foremost, I was young and immature and didn't understand the full ramifications, mainly the situation I'm in now, of falsifying that type of information. Secondly, possibly most important, I had a great job offered in front me as a young kid. And I knew I had to have this clearance to get this job and to keep this job and that was very important to me at the time, especially since the defense sector was really the only thing still promising for engineers out of college at that point. The third thing I remember being a big factor, was that I knew that my application filled out had to go through [the company's] security chains in order to get to the DoD. And my uncle was a retired Air Force Captain and a very respected ex-Vice President another defense contractor and a lot of people recognized my last name because it's a bit unusual and immediately asked me if I was related to him. And I didn't want anybody to see this and have that tarnish his image. And due to all those reasons, I felt, in my younger and more immature state that it was in my best interest to fulfill my immediate goal, to falsify the information. (Tr. p. 67).

A Special Agent from the Defense Security Service (DSS) testified that during his interview with the Applicant in July 2002, the Applicant told her about his use of marijuana. He also told her that he last used it in February 2001. (Tr. p. 30).

Paragraph 2 (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 1996 during his college years. He used it a total of 20 times, usually in casual setting with his friends. His last use of marijuana occurred in February 2001. He no longer associates with anyone who uses illegal drugs. He has no intentions of ever using any illegal drug again.

### Mitigation.

The Applicant's girl friend, supervisor, program manager and roommate all testified that they consider the Applicant to be very trustworthy and reliable. They have not witnessed any illegal drug use by the Applicant. He shows a strong dedication to his job. (See Tr. pp. 34-60 for witness testimony).

Twenty-two letters of recommendation from various past and present supervisors, coworkers, professional colleagues, and friends also indicate that the Applicant is considered extremely reliable and trustworthy. He is also well respected, professional, patriotic and honorable. (See Applicant's Exhibits A through V).

The Applicant has been responsible for dealing with classified materials on his job and has taken care to sign his classified safe log every day of work since September 26, 2001. (See Applicant's Exhibit V).

## POLICIES

Enclosure 2 and Section E.2.2. 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:

1. The drug involvement was not recent;
3. A demonstrated intent not to abuse any drugs in the future.

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.

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 dishonesty and drug abuse that 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 falsified his security clearance application (Guideline E), and drug abuse (Guideline H). 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 under Guideline E of the SOR.

The Applicant's marijuana use occurred on at least twenty occasions between 1996 and 2001, during his college years. It is also noted that he was technically employed with a defense contractor as a student intern during the period in which he was still using marijuana. However, for the past three years, since February 2001, he has not used marijuana. He states that he has no intentions of ever using it again and he has made a solid commitment to his girlfriend with whom he has a serious relationship that he will never use illegal drugs in the future. He appears to have matured in this area of concern. Given the fact that the Applicant's drug use occurred a number of years ago, and there is no indication of recent drug use, sufficient rehabilitation and mitigation has been shown. Accordingly, Guideline H is found for the Applicant.

On the other hand, there is no reasonable excuse for the Applicant to have lied on his security clearance application concerning his illegal drug involvement. The Applicant was young, immature and obviously not ready for the responsibility he was entrusted with. The Applicant is still young, hopefully more mature, but simply not ready to have the responsibility required to hold a security clearance. The Applicant knew at the time he completed the application that he was to be honest and accurate with the Government at all times. He knew that the Government relied on his representations to determine his eligibility for access to classified information. Instead of being honest, the Applicant intentionally concealed the truth about his marijuana use from the Government to avoid embarrassment to his uncle, who is well known in the defense industry. This is not a reasonable excuse to lie to the Government. Consequently, the evidence shows that the Applicant deliberately provided false information to the Government on his security clearance application of October 2001. None of the mitigating factors set forth in the Directive under Guideline E apply.

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. The Applicant provided false information concerning his illegal drug involvement in 1999 and in 2001. Based upon the lie on his security clearance application of 2001, 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).

The Applicant has not provided this Administrative Judge with sufficient evidence in mitigation that would negate the negative impact his falsifications have on his security worthiness. At this time, I cannot find that it is clearly consistent with the national interests to grant the Applicant a security clearance.

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 SOR.

As stated above, Paragraph 2 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.

Paragraph 2: For the Applicant.

Subpara. 2.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