

DATE: January 16, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-12987

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's illegal use of drugs, including hashish, marijuana, cocaine and LSD from 1985 until 1990, has been mitigated by sufficient evidence of reform and rehabilitation. Clearance is granted.

**STATEMENT OF THE CASE**

On August 25, 2003, 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 September 12, 2003, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on November 12, 2003. A notice of hearing was issued that same day scheduling the case for November 25, 2003. The hearing was held on November 25, 2003, at which the Government presented four exhibits. The Applicant presented five exhibits and testified on his own behalf. The official transcript (Tr.) was received on December 11, 2003.

**FINDINGS OF FACT**

The Applicant is 37 years old, married, and has a Bachelor's of Science Degree. He is currently working on his Master's in Business Administration. He is employed as a Software Developer/Consultant by 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 served in the Army as an infantryman from 1984 until 1987. During this period, he held a security clearance. He began using hashish in June or July 1985. He used hashish several times during the week and even more on the weekends. In April 1986, the Applicant tested positive on a random drug urinalysis administered by the military. After testing positive, he stopped using hashish.

In May 1988, the Applicant began using marijuana. He continued to use marijuana at least once a month until about May 1990. From 1988 until 1989, he also used cocaine approximately six times. From May 1985, to October 1989, the Applicant used LSD two to three times a month. He also purchased LSD. In October 1989, the Applicant had a bad experience while on either LSD or mushrooms, and realized that he never wanted to use hallucinogenics again. In 1990, the Applicant joined the National Guard, where there is a strict no anti-drug policy and he is subject to random urinalysis. It was about this time that the Applicant stopped using illegal drugs altogether. The Applicant is currently serving in the National Guard as a staff sergeant.

The Applicant has not used any illegal drug since 1990. He has maintained a drug free lifestyle for the past thirteen years.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because his conduct shows poor judgment, unreliability or untrustworthiness.

The Applicant's illegal drug use set forth above will be considered under this guideline as well.

### Mitigation

Several letters submitted on behalf of the Applicant from his supervisors are very favorable. (*See*, Applicant's Exhibit A).

The Applicant's non-commissioned Officer Evaluation Reports from 1990 through 2001 are all favorable. (*See*, Applicant's Exhibit C).

## **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:

1. the drug use 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:

4. Personal Conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known may affect the person's personal, professional, or community standing or render the person susceptible to blackmail;

Condition that could mitigate a security concern:

5. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress.

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 poor personal conduct 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 engaged in drug abuse (Guideline H) and poor personal conduct (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 introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

The Applicant's history of drug abuse, involving hashish, marijuana, cocaine, LSD and mushrooms from 1985 until 1990, shows extremely poor judgment on his part. He was a young immature teenager when he started using drugs, and continued using them until his early twenties. He then made the decision to stop using illegal drugs. Thirteen years have past, and the Applicant has not used any illegal drugs during that time. He has made many positive changes in his life over the past thirteen years. He is no longer a drug abuser. He understands that drug abuse is clearly prohibited by the Department of Defense. He is married. He has completed a college education and is seeking a graduate degree. He is respected among his colleagues in civilian employment as well as in the National Guard. He has demonstrated that he is responsible. Based upon these facts, there is evidence of a demonstrated intent that he will not use illegal drugs in the future. In this case, mitigating factors 1 and 3 clearly apply under Guideline H. Mitigating factor 5 applies under Guideline E. Accordingly, I find for the Applicant under Guideline H, (Drug Abuse) and Guideline E (Personal Conduct).

On balance, it is concluded that the Applicant has overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 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.: For the Applicant.

Subpara. 1.b.: For the Applicant.

Subpara. 1.c.: For 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 clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge