

DATE: April 15, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-18254

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's history of marijuana use is not recent, and it has been mitigated by five and a half years of a drug free lifestyle. His intentional falsifications on his security clearance application concerning his illegal drug involvement, and the fact that he was previously investigated by the Department of Defense, have not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

STATEMENT OF THE CASE

On October 10, 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 November 10, 2003, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on January 15, 2004. A notice of hearing was issued on January 22, 2004, scheduling the hearing for February 24, 2004. At the hearing the Government presented seven exhibits. The Applicant presented three exhibits and he testified on his own behalf. The official transcript (Tr.) was received on arch 11, 2004.

FINDINGS OF FACT

The Applicant is 46 years old and has a Bachelors of Science degree in Mechanical Engineering. He is employed as a Scientist 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 began using marijuana in 1968, at the young age of eleven or thirteen, for what he described to be spiritual reasons. It helped to loosen his perception, kept him from worrying about daily life, and made him a more open person. He continued to use it with varying frequency, over a period of almost thirty years, until April 1998. During this period, there were occasions where he would stop using it for long periods of time, and then start using it again. Between 1993 and 1996, the Applicant did not use marijuana at all. From 1996 to 1998 the Applicant began using it again. At some point, the Applicant met with a spiritual teacher who advised him that his continued use of marijuana would limit him rather than help him. (Tr. p. 26). In April 1998, he stopped using it again and has not used it since.

During the periods he used marijuana, from 1968 until April 1998, the Applicant purchased marijuana on a weekly basis spending between \$10.00 and \$40.00 on each purchase. From 1975 until 1980, he also tried to grow marijuana for his own use. He states that his cultivation of marijuana was, for the most part, unsuccessful.

The one and only time the Applicant was arrested and charged with a drug related arrest was in 1977. He was arrested and charged with the illegal possession of marijuana. He and his roommates in college were partying in their dorm room. Officers observed small marijuana sprouts growing. The Applicant and his roommates were arrested. On December 27, 1976, he pled guilty and was fined \$55.00. The Applicant stated that he underwent counseling and believed that the matter had been expunged.

At the hearing, the Applicant, referring to marijuana, testified that, "I think that controlling a substance which is not made by man or touched by man is inappropriate. But I believe that you have to follow the law no matter what the laws are. . ." (Tr. p. 47). I find that the Applicant has matured to some extent and is committed to abstaining from using marijuana because it is against the law.

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.

On a Personnel Security Questionnaire dated March 28, 1988, the Applicant indicated that he had no intentions of ever using marijuana again. (*See* Government Exhibit 2).

The Applicant completed a Security Clearance Questionnaire (Standard Form 86), dated March 13, 2000. In response to question 24, which asked, "have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?" The Applicant responded, "NO." (*See* Government Exhibit 1). This was a false answer. The Applicant was in fact arrested in 1976 for Illegal Possession of Marijuana.

The same questionnaire at question 28 asked the Applicant, "have you ever illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a position directly or immediately affecting public safety". The Applicant responded, "NO". (*See* Government Exhibit 1). This was a false answer. The Applicant had in fact used marijuana while possessing a security clearance during a ten year period from December 23, 1988 to January 1, 1999.

Question 29, of the questionnaire, asked the Applicant if in the last seven years he had ever been involved in the illegal purchase, manufacture, trafficking, production, transfer, shipping, receiving, or sale of any illegal drugs. The Applicant again responded, "NO". (*See* Government Exhibit 1). This was a false answer. The Applicant has in fact purchased marijuana on many occasions during the period from 1968 to April 1998.

Question 31, of the questionnaire, asked the Applicant if the United States Government has ever investigated his background and/or granted him a security clearance. The Applicant responded, "NO". (*See*, Government Exhibit 1). This was a false answer. The Applicant had in fact been investigated by the Defense Security Service on December 16, 1988, and was granted a security clearance on December 23, 1988.

None of the Applicant's excuses in his answer to the SOR, or at the hearing, were credible. The Applicant contends that in most cases he simply misunderstood or misinterpreted the questions, and that he did not deliberately falsify the security clearance application. I find that the Applicant knew or should have known to answer the questions honestly and, because he did not, he intentionally concealed this information from the Government.

Paragraph 3 (Criterion J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in criminal conduct and violated a Federal criminal statute.

As previously discussed, the Applicant's deliberate and intentional falsifications on his security clearance application by concealing his illegal drug involvement and the fact that he was previously investigated by the Department of Defense in 1988, are violations of 18 United States Code, Section 1001, a felony.

Mitigation.

The Applicant consistently demonstrates excellence in his field of expertise and has made valuable contributions to the aerospace industry. (See Applicant's Exhibits A, B and 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.

Condition that could mitigate security concerns:

1. The drug involvement was not recent.

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.

Guideline J (Criminal Conduct)

Conditions that could raise a security concern:

1. Any criminal conduct, regardless of whether the person was formally charged;
2. a single serious crime or multiple lesser offenses.

Conditions that could mitigate security concern:

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 instances of financial irresponsibility 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 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 abused marijuana (Guideline H); that he intentionally falsified material facts on his security clearance application (Guideline E), and that by doing so he violated 18 United States Code Section 1001 (Guideline J). 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 Applicant was a regular user of marijuana for almost thirty years, beginning at the early age of eleven or thirteen. For the past five and a half years, however, he has not used marijuana. He indicates that he has no intentions of using it in the future. He no longer feels the need to use marijuana for his spiritual development. He has grown up, married, had a child, is a single father, and realizes the importance of following the law no matter whether he agrees with the law. Mitigating factor 1 applies. Accordingly, I find for the Applicant under Guideline H (Drug Involvement).

There is no credible excuse that has been provided by the Applicant for his failure to reveal his illegal drug involvement and the fact that he underwent an earlier investigation by the Department of Defense in 1988, in response to questions on his security clearance application dated March 13, 2000. Consequently, the evidence proves that the Applicant has not been completely honest with the Government. I find that the Applicant deliberately failed to reveal this material information to the Government. Thus, the Applicant has violated Section 1001, Title 18 of the United States Code, which makes it a felony offense to knowingly falsify a Government document. None of the mitigation factors set forth in the Directive under Guidelines E and J 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. 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) and Guideline J (Criminal 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 Paragraphs 2 and 3 of the Government's Statement of Reasons. Paragraph 1 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: For the Applicant.

Subpara. 1.a.: For the Applicant.

Subpara. 1.b.: For the Applicant.

Subpara. 1.c.: For the Applicant.

Subpara. 1.d.: For 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.

Subpara. 2.d.: Against the Applicant.

Subpara. 2.e.: Against the Applicant.

Paragraph 3: Against the Applicant.

Subpara. 3.a.: Against the Applicant.

Subpara. 3.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