

DATE: February 24, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-19479

## **DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

#### **FOR APPLICANT**

Patrick Gonzales, Personal Representative

### **SYNOPSIS**

Applicant's continued use of marijuana after having been granted a security clearance in 1990, and his falsifications on his security clearance application concerning the extent of his marijuana use, have not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

### **STATEMENT OF THE CASE**

On July 9, 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 July 31, 2003, and requested a hearing before a DOHA Administrative Judge. This case was transferred to the undersigned on December 23, 2003. A notice of hearing was issued on January 13, 2004, scheduling the case for January 30, 2004. The hearing was held on January 30, 2004, at which the Government presented three exhibits. The Applicant presented eleven exhibits and called five witnesses to testify on his own behalf. The Applicant also testified on his own behalf. The official transcript (Tr.) was received on February 19, 2004.

### **FINDINGS OF FACT**

The Applicant is 38 years old, single, and has a Masters Degree in Engineering. He is employed as the Director of a missile systems project by a defense contractor. He 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 college and then stopped. In February 1990, he left graduate school and was recruited for employment with a defense contractor. In 1990, he underwent a background investigation to determine his security clearance eligibility. During the background investigation, he told the government that he no longer used marijuana and intended not to use it in the future. (Tr. pp. 93, and 120-121). In the summer of 1990, the Applicant resumed his marijuana use, just several months before he was granted a security clearance from the Department of Defense. The Applicant continued to use marijuana on a sporadic basis until sometime in 1994. At that time, he increased his marijuana use to about once a month, at social settings with friends.

During the period from 1994 until 1997, the Applicant purchased marijuana on several occasions for his own use. (Tr. p. 95). He continued to use marijuana until April 1999, when he made a conscious decision to discontinue using marijuana altogether. He states that he now appreciates his career, and no longer trivializes his marijuana use. (Tr. p. 96). He states that he understands the seriousness of his past conduct and has no intention to ever use marijuana again.

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 completed a Questionnaire for National Security Positions, (QNSP), dated November 16, 2000, wherein he was asked, if since the age of sixteen or in the last seven years, which ever is shorter, had he ever used a controlled substance. The Applicant answered, "YES", and indicated that he had used marijuana from February 20, 1990, to present on five occasions. (See, Question 27, of QNSP). This was not a truthful statement. The Applicant had in fact used marijuana on at least 50 occasions during the period from 1990 to 1999. (See, Government Exhibits 1 and 2).

The same questionnaire, at question 28, asked the Applicant if he had ever use 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 indicated that he used marijuana from February 20, 1990 to present on five occasions. This was not a truthful statement. The Applicant had in fact used marijuana on 50 occasions during the period from 1990 to 1999. (See, Government Exhibit 2). The Applicant testified that he completed the security clearance application in haste, and was uncomfortable and embarrassed about the true extent of his illegal drug use, and did not really take the time to think about it. (Tr. p. 104).

### Mitigation

Five witnesses testified on behalf of the Applicant. Three personal friends, one of whom is also a business partner, and two work associates, who have known the Applicant for many years are of the opinion that the Applicant is extremely reliable and trustworthy. Each of the witnesses respects the Applicant for his high moral character, integrity, honesty and dedication to his work and his family. All of the witnesses believe that the Applicant no longer uses marijuana. (Tr. pp. 20-87).

Numerous letters submitted on the Applicant's behalf are very favorable. (See, Applicant's Exhibits A, B, C, D, E, F, G, H and J).

## **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)

Conditions that could raise a security concern:

2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, 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;
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;

Conditions that could mitigate a 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 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 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 not 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 marijuana, from 1990 until 1999, shows extremely poor judgment on his part. After becoming employed in the defense industry in 1990, and having been granted a security clearance, he continued to use marijuana in complete disregard for DoD policy. In 1999, some nine years later, he made the decision again to stop using marijuana. He states that he has not used marijuana for the past four years. He now appears to understand that drug abuse is prohibited and not tolerated by the DoD. Unfortunately, he did not learn this earlier. However, since he was not truthful about the extent of his marijuana use on his security clearance application, of November 2000, I do not find him credible. The evidence shows that the Applicant minimized his use of marijuana on his security clearance application and was not candid or honest with the government. Furthermore, although not alleged, the Applicant failed to reveal that he had purchased marijuana in response to Question 29 on the same application. Based upon these facts, there is no clear evidence of a rehabilitation, or a demonstrated intent that he will not use illegal drugs in the future, or that he can be trusted with the national secrets. Under the particular facts of this case, none of the mitigating factors apply. Accordingly, I find against the Applicant under Guideline H (Drug Abuse).

It is unclear from the record why the Applicant did not reveal the true extent of his marijuana use in response to questions on his security clearance application. The Applicant appears to be stating that embarrassment and not taking the necessary time to think about the questions before answering them caused him to provide inaccurate information. With the particular evidence that I have been provided, however, there is no reasonable excuse for his failure to answer the questions truthfully. Consequently, the evidence shows that the Applicant has not been completely honest with the Government regarding his marijuana involvement. I find that the Applicant deliberately 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. Even considering all of the Applicant's positive evidence, 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).

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 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.

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 not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge