

DATE: September 13, 2004

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-24062

## **DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Edward W. Loughran, Department Counsel

#### **FOR APPLICANT**

Leodis C. Matthews, Attorney At Law

### **SYNOPSIS**

The Applicant's illegal drug use including marijuana, LSD, nitrous oxide and mushrooms have been mitigated. Her alcohol abuse and intentional falsifications on her security application have not been mitigated. Clearance is denied.

### **STATEMENT OF THE CASE**

On October 20, 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, 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 January 10, 2004 and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on March 26, 2004. A notice of hearing was issued on April 14, 2004, scheduling the hearing for May 19, 2004. On April 14, 2004, Applicant filed a motion for a continuance based upon good cause. Applicant's motion was granted. An amended notice of hearing was issued on May 26, 2004, scheduling the hearing for June 4, 2004. On June 3, 2004, Applicant's Counsel's Office informed this Administrative Judge that Applicant's Counsel had experienced a death in his family and that he was out of town planning funeral arrangements. The matter was continued again, and rescheduled for July 12, 2004. At the hearing the Government presented three exhibits. The Applicant presented three exhibits and testified on her own behalf. The official transcript (Tr.) was received on August 5, 2004.

### **FINDINGS OF FACT**

The Applicant is 28 years old. She is employed by a defense contractor as a Publication Specialist, Customer Service Representative and is applying for a security clearance in connection with her 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 Abuse). The Government alleges that the Applicant is ineligible for clearance because she abuses illegal drugs.

The Applicant began using illegal drugs as a teenager. She experimented with a number of different drugs, including marijuana, LSD, nitrous oxide and mushrooms. She used LSD about four times from June 1991 until February 1992. She also purchased LSD. She used nitrous oxide in January 1992. She used mushrooms twice in the summer of 1995 and again in the summer of 1998. She also purchased the mushrooms she used. Her drug of choice, however, became marijuana. She used marijuana on a regular basis and at times daily from 1991 to at least April 2000. During the period she used marijuana she purchased it on a number of occasions. Her use of marijuana progressed to the point where she realized that she had a serious problem and she sought treatment. She received treatment from November 1999 through April 2000 and was diagnosed with "Cannabis Dependence." She testified that she used marijuana on two occasions during her treatment program for Cannabis Dependence. (Tr. p. 36). The Applicant last used marijuana in April 2000.

Paragraph 2 (Guideline G - Alcohol Consumption). The Government alleges that the Applicant is ineligible for clearance because she abuses intoxicants.

The Applicant began consuming alcohol as a teenager, in 1991, about the same time she was using illegal drugs. In August 1994, she was arrested and charged with Minor Consumption of Alcohol. She testified that she and her college roommate were attending an outdoor party. She had only consumed about a half a beer that evening. Someone threw a bottle at a police car that was driving around in the area. The police came into the side yard of the residence where the Applicant and other college students were located. All of the students were taken down to the police annex and written a ticket. They were then released. The Applicant was required to appear in court on the charge. She was found guilty and ordered to pay a \$40.00 fine.

By October 1999, the Applicant's consumption of alcohol had increased to the point where she was drinking about four times a week, and experiencing black outs. Realizing that she had a serious problem, she decided to seek treatment for her abusive drinking. From November 1999 to April 2000, the Applicant received treatment for her condition and was diagnosed with "Alcohol Abuse." She admits that since her treatment program she has used alcohol on only one occasion to the point of intoxication.

Within the last four years, the Applicant has consumed alcohol about a dozen times. (Tr. p. 50). In the last year, she has consumed alcohol about two or three times. She testified that she enjoys a glass of wine every once in a while. She feels comfortable that she can continue to consume alcoholic beverages on an extremely limited basis. (See Government Exhibit 2).

A letter dated January 6, 2004, from the physician who has been treating the Applicant for her eating disorder and depression indicates that the Applicant has no current substance abuse or dependency issues. (See Applicant's Exhibit C).

Paragraph 3 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because she intentionally falsified material aspects of her personal background during the clearance screening process.

The Applicant completed a Security Clearance Application (Standard Form 86) dated March 27, 2001. Question 24, of the application asked the Applicant if she had ever been charged with or convicted of any offenses related to alcohol or drugs. (See Government Exhibit 1). The Applicant answered "NO." This was a false answer. The Applicant failed to list the fact that she was arrested for Minor Consumption of Alcohol. The Applicant testified that she did not really believe that the incident was considered an arrest in 1994 nor did not think about the incident when she answered the question. (Tr. p. 49).

The same questionnaire, at Question 27, asked the Applicant if since the age of sixteen or in the last seven years, whichever is shorter, has she illegally used any controlled substance. The Applicant answered "NO." This was a false answer. The Applicant failed to list her use of marijuana and mushrooms. The Applicant testified that she knew at the

time she answered the question that she had used illegal drugs within the last seven years but was scared and afraid that she would lose her job if she answered truthfully. (Tr. p. 43).

In June 2002, the Applicant was interviewed by the Defense Security Service (DSS). During the interview the Applicant was not truthful with the Special Agent regarding her illegal drug use. About a half hour after the interview was completed, the Applicant tried to contact the Special Agent to disclose the full truth concerning her illegal drug involvement. She was eventually able to contact him, and within a day or two she met with him and provided another statement wherein she disclosed the full truth concerning her drug involvement. A sworn statement of the interview was executed after their third meeting wherein she discloses her drug involvement. (*See* Government Exhibit 2).

Paragraph 4 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because she engaged in criminal conduct.

The Applicant's deliberate falsifications on her security clearance application, discussed above, are a violation of Title 18 of the United States Code, Section 1001, a felony.

## **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.

#### Condition that could mitigate security concerns:

1. The drug involvement was not recent.

### Guideline G (Alcohol Consumption)

#### Conditions that could raise a security concern:

1. alcohol-related incidents away from work, such as driving under the influence . . . ;
3. Diagnosis by a credentialed medical professional of alcohol abuse or alcohol dependence;
4. habitual or binge consumption of alcohol to the point of impaired judgement.

#### Condition 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 status, 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. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;
2. A single serious crime or multiple lesser offenses.

Condition 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 criminal conduct, illegal drug use, alcohol abuse and dishonesty 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 her a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has engaged in illegal drugs use (Guideline H); alcohol abuse (Guideline G); dishonesty (Guideline E) and criminal conduct (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 her 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 Guidelines G, E and J of the SOR.

The Applicant's drug involvement occurred between 1991 and 2000. During this period she abused marijuana, LSD, nitrous oxide and mushrooms. She also purchased LSD, mushrooms and marijuana. She sought out treatment for her drug problem. She has discontinued her use of illegal drugs. There is no evidence that the Applicant has engaged in illegal drug involvement since 2000, a period of four years. Given the fact that the Applicant's drug problems occurred a number of years ago, and there is no indication of recent problems, sufficient rehabilitation and mitigation has been shown. Accordingly Guideline H is found for the Applicant.

On the other hand, the Applicant's history of alcohol abuse that also began in 1991 continues to be a problem. Following her treatment program for alcohol abuse in 2000, she has not abstained from the use of alcohol for at least twelve months as required by the Directive. She believes that she is able to control her drinking. Although her physician who is treating her for her eating disorder and depression believes that she does not have a current substance abuse problem, her diagnosis indicates that she should completely abstain from using alcohol in order to prevent further alcohol abuse. None of the mitigating factors set forth in the Directive apply. Therefore, sufficient rehabilitation and mitigation has not been shown. Accordingly, Guideline G is found against the Applicant.

In addition, the Applicant did not reveal her complete criminal or drug involvement history in response to questions 24 and 27 on her security clearance application. Her excuse for not being truthful was because she was scared and afraid that she would lose her job. This is not an acceptable excuse to lie to the Government. She has violated Title 18 of the United States Codes, Section 1001 which is a felony. Consequently, her dishonesty with the Government concerning her criminal history and drug involvement is unacceptable. None of the mitigating factors set forth in the Directive under Guideline E apply. 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 her personal background. This Applicant has not demonstrated that she is trustworthy, and does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guidelines E (Personal Conduct) and J (Criminal Conduct).

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing her 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, 3 and 4 of the SOR. As stated above, 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.

Subpara. 1.e.: For the Applicant.

Subpara. 1.f.: For the Applicant.

Subpara. 1.g .: For the Applicant.

Subpara. 1.h.: For the Applicant.

Subpara. 1.i.: 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.

Paragraph 3: Against the Applicant.

Subpara. 3.a.: Against the Applicant.

Subpara. 3.b.: Against the Applicant.

Paragraph 4: Against the Applicant.

Subpara. 4.a.: 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