

DATE: June 17, 2004

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 03-01734

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Carole L. Georges, Attorney At Law

SYNOPSIS

Applicant's long history of drug abuse and related criminal conduct has not been mitigated by sufficient evidence of reform and rehabilitation. He did not intend to falsify his security clearance application. Clearance is denied.

STATEMENT OF THE CASE

On October 1, 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 October 21, 2003, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on February 26, 2004. A notice of hearing was issued on March 17, 2004, scheduling the hearing for April 21, 2004. At the hearing the Government presented three exhibits and called one witness. The Applicant presented four exhibits and testified on his own behalf. The official transcript (Tr.) was received on May 7, 2004.

FINDINGS OF FACT

The Applicant is 38 years old, unmarried and holds a Bachelor's of Science Degree in Electronic Engineering Technology. He is employed by a defense contractor as a Aerospace Engineer, 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 admitted to each of the allegations, set forth in the SOR under this guideline, except allegations 1(g) and 3(a).

The Applicant began using marijuana in the summer of 1980 at the young age of fourteen. He continued to use marijuana throughout high school. He also used other illegal drugs including what he believed to be mushrooms, cocaine and LSD. As the years passed, the Applicant continued to use marijuana on a daily basis. In 1984, the Applicant joined the Army, and stopped using marijuana for about a two year period. In 1987, he resumed his use of marijuana about six months before he was discharged. After his military discharge, he continued to use marijuana on a daily basis. (See Government Exhibit 2).

In late 1993, the Applicant began using methamphetamine (speed). He continued to use it on a daily basis until March 1994. He purchased the illegal drugs he used from drug dealers. He also grew a couple of marijuana plants during the summer of 1993 for his personal use.

By 1994, the Applicant realized his use of methamphetamine (speed) was out of control and that he needed to do something about it. He states that he went to the police department, told them that he had a drug problem, and that he needed to get cleaned up. (Tr. p. 71). At that time the Applicant was homeless and living in his car. The Applicant was arrested in March 1994, for being Under the Influence of a Controlled Substance. He was ordered by the court to enter and complete a six month drug awareness program and to attend ten Alcoholics Anonymous (AA) meetings. The Applicant completed the drug program sometime in 1995. Following this program, the Applicant did not use any illegal drugs for about two years. He then resumed his illegal drug use by using marijuana sporadically at times, daily at times, and then, at times, not at all. The Applicant last used cocaine on New Years Eve 2000. He also used methamphetamine about ten times since completing his drug program He used cocaine as recently as January 2000, and marijuana as recently as March 2001. (See Government Exhibit 2).

The Applicant explained that in 1988, not 1998 as alleged by the Government, that there was one occasion where he picked up about two pounds of marijuana and transported it to another city for a friend, who was a drug dealer, that he used to socialize with. The friend gave him a small portion of marijuana in return. (Tr. pp. 37-39). The Applicant contends, however, that he has never been involved in the trafficking of illegal drugs for a profit or gain. (See Applicant's Answer to SOR).

From 1998 until March 2001, while working for a defense contractor, the Applicant has on occasion used marijuana, cocaine and methamphetamine (speed). He has not used it while at work.

The Applicant states that since March 2001, he has turned his life around. He has a stable relationship with his girlfriend whom he has known for ten years and lived with for the past nine years. He has a young son and wants to set a good example for him. He states that he no longer uses illegal drugs and has no intention of ever using them again in the future. He avoids associating with any one who uses drugs.

Paragraph 2 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in criminal conduct.

The Applicant admitted to each of the allegations set forth in the SOR under this guideline. In June 1987, the Applicant was arrested for Possession of a Controlled Substance, Cocaine. Sentencing was declined in this case.

In March 1994, the Applicant was arrested for Driving Under the Influence of a Controlled Substance. This arrest is described in paragraph 1.

Paragraph 3 (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 September 17, 2002. Question 29,

asked him if in the last seven years he had been involved in the illegal purchase, manufacture, trafficking, production, transfer, shipping, receiving, or sale of any narcotic, depressant, stimulant, hallucinogen, or cannabis for his intended profit or that of another. The Applicant answered "NO". (See Government Exhibit 1). The Government alleges that the Applicant intentionally concealed his trafficking of marijuana in 1998.

I find that the Applicant did not intentionally falsify this information on his security clearance application. First, the Applicant did not believe that his conduct involved drug trafficking, even though it appears that it did. Secondly, the Applicant credibly testified that he mistakenly listed that this incident occurred in 1998, when it actually occurred in 1988, during the time he lived in another state. (Tr. pp. 37-39 and 67). Therefore, this conduct occurred fourteen years before completing the security clearance application, not within the last seven years. Accordingly, I find that the Applicant did not deliberately attempt to conceal this information from the Government on his security clearance application.

Mitigation.

An affidavit from the Applicant's girlfriend indicates that the Applicant has been drug free for at least three years. She states that he has consistently proved to be a positive influence and a true asset to her life. She further states that he is a person of high integrity, hardworking, independent and a positive self starter. (See Applicant's Exhibit C).

The Applicant's college transcripts indicate an "A" average in all of his courses. (See Applicant's Exhibit A).

An affidavit from a physician who was retained to do an addiction evaluation of the Applicant notes that the Applicant's father was an alcoholic and his mother drank a lot. This provides concern of a possible genetic factor in the potential for addiction. However, the physician concluded that it was his impression that the Applicant is not a chemically dependent person, nor an abuser of legal or illegal drugs or alcohol. He further states that the Applicant is fully aware of the consequences of any use of these substances, and that there has been no progression of his use over the past years and no use or abuse recently. (See Applicant's Exhibit D).

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 a security concern:

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.

Conditions that could mitigate security concerns:

None.

Guideline E (Personal Conduct)

Condition that could raise a security concern:

None.

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 drug abuse and criminal conduct 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 has engaged in drug abuse (Guideline H) 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 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 Guidelines H and J of the SOR.

The Applicant's long history of drug abuse started in 1980, when he was fourteen years old and continued until March 2001, when he was thirty-five. For twenty-one years the Applicant was deeply involved with illegal drugs. He used them, purchased them from drug dealers, and tried to grow them. He also transported some marijuana from one city to another for a friend who was a drug dealer. During this twenty-one period the Applicant abused marijuana on a daily basis at times, and also experimented with cocaine, LSD, mushrooms and methamphetamine (speed). After hitting rock bottom in 1994, homeless and living in his car, he participated in a court ordered drug awareness program and attended AA meetings. He was able to remain drug free for two years. After that, however, he relapsed and returned to using marijuana, cocaine and methamphetamine.

Since March 2001, the Applicant has not used any illegal drugs. He is commended for his effort to again turn his life around. He has now been drug free for over three years. However, given his extensive history of drug abuse and the fact that he has stopped several times in the past and started again after two or so years of abstinence, there is no assurance that he will remain drug free for an extended period beyond that. Therefore, at this time, it is too soon to determine that the Applicant will remain drug free once and for all. More time is needed in rehabilitation in order to ensure that he will not resort to his old habits.

The Applicant's criminal history involves two drug related arrests, one in 1987, the other in 1994 and many other occasions where he engaged in illegal drug use, transportation, or cultivation, but was not arrested. Taken together, Applicant's criminal conduct establishes that the exercise of poor judgment is not an aberration, but has been a basic part of Applicant's character for almost all of his adult life.

Under Guideline J (Criminal Conduct), Disqualifying Conditions (DC) 1 (any criminal conduct, regardless of whether the person has been formally charged) and 2 (a single serious crime or multiple lesser offenses) are clearly applicable. None of the mitigating conditions apply. Although his last arrest occurred in 1994, about ten years ago, in the context of so many criminal acts over so long a period, there is no substantive indication of a fundamental change in the Applicant's thinking process or character. On this basis, I conclude that the criminal conduct remains current and is clearly not an isolated incident (MC 1, 2). There is also some indication of the Applicant's rehabilitation, however, not enough. Accordingly Guideline J is found against the Applicant.

With respect to Guideline E, I find that the Applicant did not intend to deliberately conceal information from the Government in response to question 29 on his security clearance application. Accordingly, this allegation is found for the Applicant.

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 and 2 of the SOR.

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.

Subpara. 1.d.: Against the Applicant.

Subpara. 1.e.: Against the Applicant.

Subpara. 1.f.: Against the Applicant.

Subpara 1.g.: Against the Applicant.

Subpara 1.h.: Against the Applicant.

Subpara 1.i.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: Against the Applicant.

Paragraph 3: For the Applicant.

Subpara. 3.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