

DATE: October 27, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-02097

ECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's long history of criminal activity, illegal drug use, delinquent debts and falsifications on his security clearance application have not been mitigated by sufficient evidence of reform and rehabilitation. The provisions of 10 USC 986 do not apply. Clearance is denied.

STATEMENT OF THE CASE

On January 20, 2004, 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 March 25, 2004, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on May 20, 2004. A notice of hearing was issued on June 23, 2004, scheduling the hearing for July 29, 2004. At the hearing the Government presented twenty-two exhibits. The Applicant testified on his behalf. The record was left open to allow the Applicant an opportunity to submit additional supporting documentation. The Applicant submitted one Post Hearing Exhibit. The official transcript (Tr.) was received on August 19, 2004.

FINDINGS OF FACT

The Applicant is 33 years old. He is unmarried and has a Bachelor's Degree in Electrical Engineering. He is employed as a Electrical Engineer 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 J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he has engaged in criminal conduct and violated a Federal criminal statute.

The Applicant admits all of the allegations set forth under this guideline except 1(b), 1(e), 1(f), 1(g), 1(i), and 1(m). During the period from 1989 through 2002, the Applicant was arrested, cited or stopped on at least fourteen separate occasions for various rule violations and violations of the law.

In 1988, at the young age of seventeen, the Applicant, who is from a small town in the south, was accepted to a prestigious University on the west coast. He was anxious to come to the west coast to get his education, but he not prepared for the culture shock that included the very expensive cost of living. He soon discovered that he could not afford it. He was determined, however, to fulfill his dream of obtaining his college education. Over a twelve year period, from 1988 until 2000, he went to school, off and on, as he could afford to. During this period, he was presented with many hardships and difficult situations. There were times when he was essentially homeless, and slept in the library on campus. He also lived with friends and relatives because he could not afford to pay for his books and an apartment at the same time. He believes that this homelessness, and at times hopelessness, caused him to violate the law from time to time. He was eventually awarded his degree in the winter of 2000.

In 1989, he was arrested for Driving Under the Influence of Alcohol and pled Nolo Contendere and was fined \$482.00. In May 1992, he was arrested for Possession of Cocaine, Possession with Intent to Distribute, and Possession of Marijuana. All counts were nolle prossed. In July 1995, the Applicant was arrested for Failure to Obey Sign-Exclusive Lanes and Unlicensed Driver. The complaint was later amended to add a charge of Park Unlawful Blocking any Driveway. The Applicant pled Nolo Contendere to Park Unlawful Blocking any Driveway and was ordered to pay \$113.00 in costs and fees. The remaining charges were dismissed. In May 1998, the Applicant was arrested for Theft of Property. He was found guilty and placed on probation for eighteen months and ordered to pay \$560.00 in fines and costs. In March 1999, the Applicant was arrested for Vandalism and Enter Noncommercial Dwelling. He pled Nolo Contendere and was placed on probation for twenty-four months, ordered to serve six days in jail, pay attorney fees and restitution. (The Police and Court Records of the incidents discussed above are set forth in Government Exhibits 2, 3, 4, 7, 8, 10, 13, 14, 15, 16, and 17).

In August 1999, September 1999, twice in August 2000, September 2000, twice in January 2001, and February 2001, the Applicant was arrested and/or cited by the University Police for various rules violations. On these occasions, the Applicant was charged with Sleeping in the Lounge, Aggressive Panhandling, Possession of Marijuana, and Riding a Bicycle Without a Headlamp. (See Government Exhibits 5, 6, 7, 9, 11, and 12).

The Applicant's most recent arrest occurred in December 2001, for Battery. He pled Nolo Contendere, was placed on summary probation for thirty six months, fined \$100.00 and order to complete 12 hours of anger management class.

Paragraph 2 (Guideline H - Drug Abuse). The Government alleges that the Applicant is ineligible for clearance because he abuses illegal drugs.

The Applicant denies all of the allegations under this guideline except 1(e), 1(g), and 1(h). The Applicant used a variety of illegal drugs beginning in about 1987 and continuing off and on until at least June 2002. The Applicant used marijuana, cocaine, crack cocaine, ecstasy on one occasion in 2001, and LSD on three occasions in about 1990. He testified that the last time he used any illegal drug was after his arrest for Possession of Marijuana on August 8, 2000. (Tr. p. 55). He also testified that he has no intentions of using any illegal drug again. (Tr. p. 55).

In March 2001, the Applicant completed an application for a security clearance. He was initially interviewed by the Defense Security Service in April 2002. (See Government Exhibit 20). The Government contends that the Applicant has continued to use illegal drugs. Based upon the Applicant's continued use of illegal drugs, the Government argues that the provisions of 10 United States Codes, Section 986 disqualifies the Applicant from having a security clearance granted or renewed by the Department of Defense.

The Applicant testified that he had not used any illegal drug since August 2000. (Tr. 55). However, there is evidence in the record to support the fact that he used marijuana until at least June 2002. (*See*, Government Exhibit 21). Although his credibility is in question, there is no evidence in the record to support the fact that the Applicant continued to use any type of illegal drug or controlled substance after June 2002. The Government has no evidence that he is currently using illegal drugs, and therefore this case does not come within the purview of 10 United States Code, Section 986. Accordingly, the provisions of 10 United States Code, Section 986 are inapplicable here and do not disqualify the Applicant from a security clearance.

Paragraph 3 (Guideline F - Financial Considerations) The Government alleges that the Applicant is ineligible for clearance because he is financially overextended and at risk to engage in illegal acts to generate funds.

The Applicant admits all the allegations under this guideline except 1(m). The Applicant admits his indebtedness to seventeen separate creditors. His debts total in excess of \$20,000. The Applicant claims that each of the creditors listed in the SOR have been placed in a consolidation plan. He is not sure which debts are being paid. (*See* Tr. p. 45-46). He failed to provide any documentary evidence to support this payment plan. Credit reports of the Applicant indicate that the debts are still owing. (*See* Government Exhibits 18 and 19).

Paragraph 4 (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 provided a signed sworn statement to the Defense Security Service (DSS) dated April 16, 2002, wherein he states that he had never been involved with any law enforcement agencies in the past, other than one incident in December 1989, and one in February 2001. (*See* Government Exhibit 20). This was a false statement. The Applicant had in fact been arrested, and or charged, and or cited by law enforcement as set forth in 1.a, 1.c., and 1.m., in the SOR.

In the same signed sworn statement the Applicant stated that he had only used marijuana on three occasions since about 1990. This was also a false statement. The Applicant had in fact used marijuana anywhere from 100 to 200 times, the most recent use occurred in June 2002. (*See* Government Exhibit 21).

The Applicant completed a Questionnaire for National Security Positions (Standard Form 86), dated March 20, 2001. In response to question 24, which asked, "if he had ever been charged with or convicted of any offenses related to alcohol or drugs," the Applicant responded, "NO." (*See*, Government Exhibit 1). He failed to list his arrests set forth under subparagraphs 1(e), 1(f), 1(m) and 1(n) of the SOR. The Applicant states that he misunderstood some of the questions about the time frame of the usage. He also believed the questions deserved more than a "yes" or "no" answer. (Tr. p. 53).

The same questionnaire at question 26, asked the Applicant whether in the last seven years the Applicant had ever been charged with, or convicted of any offense not listed in modules 21,22,23, 24, or 25? The Applicant responded, "NO". (*See*, Government Exhibit 1). This was a false answer. The Applicant failed to list his arrests set forth under subparagraphs 1(a), 1(b), 1(j), 1(k) and 1(l) of the SOR.

The same questionnaire at question 27, asked the Applicant if since the age of sixteen or in the last seven years, which ever is shorter, has he illegally used a controlled substance. The Applicant responded "NO". This was a false answer. The Applicant failed to list the illegal drugs he used as set forth under subparagraphs 2(a), 2(b), 2(c) and 2(d) of the SOR. The Applicant initially explained that he omitted his experimentation of marijuana on the questionnaire because he did consider it to be a serious offense. Also, his frequency of use did not constitute what he would consider to be habitual use. (*See* Government Exhibit 20). In his most recent statement to DSS dated June 13, 2002, he admitted that he lied concerning his drug use. (*See* Government Exhibit 21).

The same questionnaire at question 37, asked the Applicant if in the last seven years, has he had any judgments against him that have not been paid? The Applicant responded, "NO" This was a false answer. The Applicant failed to list the judgment he had against him as set forth under subparagraphs 3(j) and 3(k) of the SOR.

The same questionnaire at question 38, asked the Applicant if in the last seven years has he been over 180 days delinquent on any debts? The Applicant responded, "NO". This was a false answer. The Applicant failed to list his delinquent debts set forth under subparagraphs 3(a), 3(d), 3(e), 3(f), 3(g), 3(i), 3(l), 3(m), 3(n), 3(o), 3(p), and 3(q) of the

SOR.

I find that the Applicant knew or should have known that he had to reveal his entire arrest, drug and financial history on his security clearance application. The fact that he did not reveal this information leads me to believe that he intentionally concealed this information from the Government. The Applicant's deliberate and intentional falsifications on his security clearance application by concealing his arrest, drug and financial history, are violations of 18 United States Code, Section 1001, a felony.

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 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.

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 F (Financial Considerations)

Conditions that could raise a security concern:

1. A history of not meeting financial obligations;
3. Inability or unwillingness to satisfy debts.

Conditions that could mitigate security concerns include:

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, 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;

5. A pattern of dishonesty or rule violations.

Conditions 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, 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 engaged in criminal conduct (Guideline J); involved in drug abuse (Guideline H); was financially irresponsible (Guideline F); 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.

Admittedly, the Applicant went through extreme hardship to obtain his college education and is commended for his endurance. However, this does not justify his pattern of rule violations and violations of the law. The Applicant now has a serious criminal record that he must answer to. His most recent arrest occurred in December 2001, less than three years ago. Under Guideline J, Disqualifying Conditions *1. Any criminal conduct, regardless of whether the person was formally charged and, 2. a single serious crime or multiple lesser offenses* apply. None of the mitigating conditions set forth in the Directive under Guideline J apply. Accordingly, I find against the Applicant under Guideline J (Criminal Conduct).

The Applicant's history of drug involvement is also quite extensive. He used marijuana, cocaine, crack cocaine, ecstasy and LSD from 1987 until at least June 2002. He was also arrested for Possession of Marijuana, Possession of Cocaine, and Possession With Intent to Distribute. He now states that he has no intentions of ever using any illegal drug again. However, given his drug use in the past coupled with the fact that he has not been truthful to the Government in other respects about his past, his credibility is in question, and I am not convinced that he will not return to using illegal drugs in the future. Under Guideline H, Disqualifying conditions, *1. any drug abuse, and 2. illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution* apply. None of the mitigating factors set forth in the Directive under Guideline H apply. Since there is no evidence that the Applicant is currently using illegal drugs, the provisions of 10 United States Codes, Section 986 do not apply. Accordingly, I find against the Applicant under Guideline H (Drug Involvement).

With respect to his finances, the Applicant has a history of excessive indebtedness. Although he states that he had consolidated his delinquent debts and is working with a consumer credit counselor, there is no documentary evidence in the record to support this. Furthermore, he is unable to explain which of his \$20,000 in delinquent debts have been paid through this consolidation and which have not. Under Guideline F Disqualifying Conditions *1. A history of not meeting financial obligations, and 3. An Inability or unwillingness to satisfy debts* apply. None of the mitigating factors set forth in the Directive under Guideline F apply. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

It is unclear from the record why the Applicant did not reveal his criminal, drug and financial history in response to questions on his security clearance applications. Consequently, the evidence proves that the Applicant has not been completely honest with the Government regarding his employment and financial history. I find that the Applicant deliberately failed to reveal this 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 1, 2, 3 and 4 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.

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.

Subpara. 1.j.: Against the Applicant.

Subpara. 1.k.: Against the Applicant.

Subpara. 1.l.: Against the Applicant.

Subpara. 1.m.: Against the Applicant.

Subpara. 1.n.: Against 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.

Subpara. 2.f.: Against the Applicant.

Subpara. 2.g.: Against the Applicant.

Subpara. 2.h.: Against the Applicant.

Paragraph 3: Against the Applicant.

Subpara. 3.a.: Against the Applicant.

Subpara. 3.b.: Against the Applicant.

Subpara. 3.c.: Against the Applicant.

Subpara. 3.d.: Against the Applicant.

Subpara. 3.e.: Against the Applicant.

Subpara. 3.f.: Against the Applicant.

Subpara. 3.g.: Against the Applicant.

Subpara. 3.h.: Against the Applicant.

Subpara. 3.i.: Against the Applicant.

Subpara. 3.j.: Against the Applicant.

Subpara. 3.k.: Against the Applicant.

Subpara. 3.l.: Against the Applicant.

Subpara. 3.m.: Against the Applicant.

Subpara. 3.n.: Against the Applicant.

Subpara. 3.o.: Against the Applicant.

Subpara. 3.p.: Against the Applicant.

Subpara. 3.q.: Against the Applicant.

Subpara. 3.r.: Against the Applicant.

Paragraph 4: Against the Applicant.

Subpara. 4.a.: Against the Applicant.

Subpara. 4.b.: Against the Applicant.

Subpara. 4.c.: Against the Applicant.

Subpara. 4.d.: Against the Applicant.

Subpara. 4.e.: Against the Applicant.

Subpara. 4.f.: Against the Applicant.

Subpara. 4.g.: 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