

DATE: May 19, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-02505

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Thomas M. Abbott, Attorney At Law

SYNOPSIS

Applicant's history of marijuana use has been mitigated by her expressed and demonstrated commitment to a drug free lifestyle. Clearance is granted.

STATEMENT OF THE CASE

On October 15, 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 November 5, 2003, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on January 27, 2004. A notice of hearing was issued on February 4, 2004, scheduling the hearing for March 4, 2004. At the hearing the Government presented two exhibits. The Applicant presented thirteen exhibits and testified on her own behalf. The official transcript (Tr.) was received on March 23, 2004.

FINDINGS OF FACT

The Applicant is 26 years old, single and holds a bachelors degree in Material Science and Engineering and a Masters Degree in Aerospace Engineering. She is employed by a defense contractor as a Power Systems Engineer, and is seeking to retain her security clearance in connection with her employment.

The Government opposes the Applicant's request for a continued 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 she has abused illegal substances.

The Applicant began using marijuana in 1994 at the young age of sixteen. She used it on an average of three times a year, usually at social events, mainly during college, until June 2002. She has not used it since June 2002, and she has no intention of ever using it in the future. She has never purchased, sold or possessed it beyond her use at a social event when offered to her. For the last two years, the Applicant has lived with her fiancé who expresses a strong position against the use of any illegal drugs. They plan to be married in November of this year. The Applicant no longer associates with anyone who uses illegal drugs. (Tr. pp. 33-36).

The Applicant admits to having used marijuana once or twice after becoming employed with a defense contractor. She attributes this use of marijuana to her immaturity at the time. After filling out the security clearance application in April 2003, she made the commitment never to use any illegal drugs again. This commitment was not difficult for her because marijuana use was never important to her. (Tr. p. 24). She fully understands that DoD policy prohibits the use of illegal drugs and that it is against the law. She also understands the significance and responsibilities that come with holding a security clearance. I conclude she has matured and learned from her mistakes. She plans to get married soon and no longer associates with illegal drugs or anyone who uses them.

Mitigation.

Letters of recommendation from the Applicant's department manager and other professional colleagues with whom she has worked indicate that the Applicant is extremely responsible, reliable and trustworthy. She is described as a very focused, intense individual with the highest integrity and morals. She has always accomplished her job commitments in a timely manner and with the highest quality. She is clearly dedicated to performing her job with the utmost professionalism. (See Applicant's Exhibits A, B, E and L).

Applicant's performance evaluation for 2003 exceeds expectations in almost every category. (See Applicant's Exhibit F). Applicant's performance objectives for 2001 and 2002 indicate that her performance consistently met all job requirements and exceeds expectations in multiple areas. It further states that she is "often innovative, plans for and accomplishes worthwhile objectives whether self-initiated or established by others". (See Applicant's Exhibits H and I).

Affidavits from the Applicant's fiancé and her sister indicate that the Applicant has put her infrequent drug use behind her. She has made it clear to them that she never intends to use marijuana in the future, and that she will not ever be put in a situation where marijuana is used in her presence. (See Applicant's Exhibit C and 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:

1. the drug involvement was not recent;
3. a demonstrated intent not to abuse any drugs in the future.

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 use 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). 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 introduced persuasive evidence in rebuttal, explanation or mitigation

that is sufficient to overcome the Government's case under Guideline H of the SOR.

The Applicant's marijuana use occurred between 1994 and 2002, over an eight year period. During this period she abused marijuana at most, about three times a year. Although this use was more than experimental, it was fairly infrequent, occurring only at certain social events when offered to her. Since 2002, she has not used any illegal drugs and indicates that she has no intentions of ever using illegal drugs again. She has matured, and plans to marry a man who does not use illegal drugs, nor does he want her to ever use them. She understands that the use of illegal drugs is prohibited by law and against DoD policies. She also understands that holding a security clearance is incompatible with illegal drug use. There is no evidence that the Applicant has engaged in illegal drug involvement since 2002, a period of almost two years. Given the fact that the Applicant's drugs use occurred several years ago, there is no indication of recent drug use, and there is a credible commitment to remaining in a drug free lifestyle in the future, sufficient rehabilitation and mitigation has been shown. itigating conditions 1 and 3 apply. Accordingly Guideline H is found for the Applicant.

On balance, it is concluded that the Applicant has overcome the Government's case opposing her request for a security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 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: For the Applicant.

Subpara. 1.a.: For the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge