

DATE: May 24, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-07915

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's extramarital affair, which is not common knowledge and that his wife does not know about raises a security concern and has not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On November 19, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on January 25, 2005, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on February 15, 2005, consisting of five documents, referred to as Items 1 through 5. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on March 3, 2005, and he submitted no reply.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR and the five exhibits. The Applicant is 47 years of age. He is employed as a Senior Subcontracts Administrator for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline D- Sexual Behavior). The Government alleges in this paragraph that the Applicant is ineligible for clearance because his sexual behavior involved a criminal offense, is indicative of a personality or emotional

disorder, subjects the individual to undue influence or coercion, or reflects lack of judgement or discretion.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he has engaged in conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations.

The Applicant admits to each of the allegations set forth in the SOR under these guideline.

The Applicant is a veteran who has held a security clearance for twenty-nine years. Since August 4, 2004, the Applicant has been involved in an extramarital affair with a woman he met overseas. In the past year he has seen her on two occasions and he plans to see her in the future. The Applicant's wife has no knowledge of this affair. The Applicant explained that his wife would be hurt if she were to learn about the affair however he believes his marriage would survive. He further states that he would never sell out his country for any reason. (See Government Exhibit 5).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

(Guideline D (Sexual Behavior))

Condition that could raise a security concern:

3. Sexual behavior that causes an individual to be vulnerable to coercion, exploitation or duress.

Condition that could mitigate security concerns:

None.

Guideline E (Personal Conduct)

Conditions that could raise a security concern:

4. Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or pressure;

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 eligible for a security clearance. 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."

The Government must make out a case under Guideline D (Sexual Behavior) and Guideline E (Personal Conduct) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts and questionable sexual behavior have a direct and negative impact on his suitability for access to classified information.

It is acknowledged that the Applicant is a veteran who has held a security clearance for over a quarter century without incident. However, the Applicant's extramarital affair is not public knowledge and his wife does not know about it, which places him in a vulnerable position to pressure, coercion and/or blackmail, which in turn could subject the Government to a security risk. This affair is ongoing. Therefore, the risk is great that he may fall prey to exploitation, coercion or duress. Under Guideline D, Disqualifying Condition (3) *Sexual behavior that causes an individual to be vulnerable to coercion, exploitation or duress* applies. None of the mitigating conditions are applicable. Under Guideline E, Disqualifying Condition (4) *Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or pressure* applies. Again, none of the mitigating conditions are applicable. The Applicant has not met his burden of demonstrating that his questionable sexual behavior does not raise a security concern, and Guidelines D and E are found against the Applicant.

Considering all the evidence, the Applicant has not met the mitigating conditions of Guidelines D and E of the

adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines D and E.

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.

Subparagraph 1.a.: Against the Applicant

Paragraph 2: Against the Applicant.

Subparagraph 2.a.: Against the Applicant.

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge