

DATE: June 22, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-13561

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Lynette Andresen, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's intentional falsifications during his interview with a Special Agent DSS concerning the extent of his previous drug use and drug history have not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

STATEMENT OF THE CASE

On January 16, 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 February 3, 2004, 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 April 12, 2004. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on April 29, 2004, and he submitted no reply.

The case was transferred to the undersigned for resolution on June 21, 2004.

FINDINGS OF FACT

The Applicant is 44 years old. He is employed as a Senior Service Technician 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 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 admits the allegations set forth in the SOR.

The Applicant was interviewed by a Special Agent from the Defense Security Service (DSS) on December 17, 2002. During this interview the Applicant was asked among other things about his use of illegal drugs. The Applicant stated that he stopped smoking marijuana in 1986. (*See*, Government Item 5). He failed to list that he had in fact continued to use marijuana sporadically every three or four months when in the company of friends who were smoking it until at least 1992 or 1993. (*See* Government Item 5). The Applicant explained that he provided the date of 1986 as the date he stopped using marijuana because that was when his son was born, and that was when he had wanted to stop using marijuana. (*See* Government Item 3).

During that same interview the Applicant stated that the only other illegal drugs he has ever used were marijuana and cocaine. The Applicant failed to disclose that he has also used amphetamines (speed) a number of times, LSD at least twice, PCP at least twice, quaaludes at least four or five times, and heroin on one occasion in 1991. The Applicant explained that he did not reveal all of the illegal drugs he has used in the past because, if he told the truth, he knew that he had been denied a security clearance by NSA in the past because of his drug use and admission to drug use and figured his security clearance would not be granted this time for the same reason. He figured that he was not going to be granted a security clearance anyway so why bother going into detail concerning his past drug use. (*See* Government Item 5).

A subsequent statement to DSS, dated May 6, 2003, indicates that the Applicant was re-contacted by the Special Agent from DSS that had interviewed him earlier for further questioning. During that interview the Applicant admitted that he had not been 100% truthful with the agent concerning his drug use. (*See* Government Item 5).

I find that the Applicant knew or should have known that he was required to reveal all of his illegal drug use and drug history during his interview with the DSS agent. The fact that he felt he would be denied if he told the true is irrelevant and very irresponsible. The Applicant deliberately failed to reveal this information and intentionally sought to conceal it from the Government.

Paragraph 2 (Criterion J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in criminal conduct and violated a Federal criminal statute.

As discussed above, the Applicant's deliberate and intentional falsifications during his interview with DSS concerning the extent of his illegal drug use and 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 E (Personal Conduct)

Condition that could raise a security concern:

3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination.

Condition that could mitigate security concerns:

None.

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.

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 instances of 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 intentionally concealed his illegal drug use from the Government during his interview with DSS (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.

It is clear from the record why the Applicant did not reveal his illegal drugs use and history during his interview with DSS. He expected that he would be denied if he told the truth. He hoped no one would catch the omission. His explanation is not an acceptable one. Consequently, the evidence proves that the Applicant has not been completely honest with the Government regarding the extend of his illegal drug involvement. 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 information to the government. 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 and 2 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.

Paragraph 2: Against the Applicant.

Subpara. 2.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

