

DATE: May 17, 2006

In Re:

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SSN: -----

Applicant for Security Clearance

CR Case No. 04-10806

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Richard Stevens, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's criminal conduct combined with his extensive history of drug abuse has not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

**STATEMENT OF THE CASE**

On July 12, 2005, 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 September 7, 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 March 20, 2006, consisting of eleven documents, referred to as Items 1 through 11. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on April 17, 2006, and he submitted a reply dated April 17, 2006.

The case was assigned to the undersigned for resolution on May 1, 2006.

**FINDINGS OF FACT**

The Applicant is twenty four years old, unmarried and holds a Bachelor's Degree in Business. He is employed by a defense contractor as a Logistics Analyst, 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 engaged in criminal conduct.

In March 2002, the Applicant, while a student at a prestigious military college, entered the dormitory rooms of about seven fellow cadets and stole their debit and credit cards. The Applicant then used these debit and credit cards to purchase various items. The Applicant was subsequently charged with 2<sup>nd</sup> Degree Burglary (Felony), Financial Transaction Card Theft (Felony), and Obtaining Property Under False Pretenses. In December 2002, he pled guilty to two misdemeanors, and was convicted in State court of Petit Larceny and Receiving Goods/Services Fraudulently (\$500 or less) and was sentenced to, in effect, one year in jail (suspended ) and fines and costs totaling \$370.00. (*See* Government Exhibits 8 and 11).

Paragraph 2 (Guideline H - Drug Involvement). The Government alleges that the Applicant is ineligible for clearance because he has abused illegal substances.

The Applicant has admitted to widespread multiple drug abuse during a five month period, from December 2001 thorough April 2002, while he was a full time college student. These illegal substances include not only dangerous narcotics, but medications that require a medical prescription. The Applicant was not authorized to use any of these illegal drugs. He also admits to purchasing and selling illegal drugs and prescription drugs. The Applicant used marijuana with varying frequency from December 2001 through March 2002. He used Ecstasy on four to six occasions from December 2001 through March 2002. He used cocaine on two occasions from January 2001 through February 2002. He used Cystal methamphetamine on three or four occasions in December 2001. He used Adderral with varying frequency from October 2001 through March 2001. He used Dexedrine with varying frequency from October 2001 through March 2002. He used Ketamine Hydrochloride on three or four occasions from December 2001 through February 2002. He used Lortab on two or three occasions from November 2001 through February 2002. He used Ritalin with varying frequency from October 2001 through March 2002. The Applicant used Tylenol III with Codeine on five to seven occasions from November 2001 through January 2002. He used Vicodin on three to five occasions from January 2002 to February 2002. He used Wellbutrin with varying frequency from October 2001 to March 2002. He used Xanax on three to five occasions from December 2001 to February 2002. He used Zolofit with varying frequency from October 2001 through March 2001. (*See* Governments Exhibits 7 and 9).

A letter from the Director of the his college Counseling Center dated February 19, 2004, reflects that the Applicant was counseled by their facility on at least six separate occasions. The letter further indicates that upon receipt of the signed consent form giving them authority to release confidential information to the Defense Security Service, they met with the Applicant. The Applicant, at that time, chose to limit the disclosure of information from his counseling center file. (*See* Government's Exhibit 10).

The Applicant contends that he has learned a lesson from the past and has changed his life around. He has done some self-examination and indicates that he now lives by what he characterizes as a "mission statement" and has adopted a new lifestyle of sobriety and healthy living. He has been working to improve his credit rating which he indicates is now a 760 and has recently purchased his first house. He attributes his problems of the past to be immaturity, foolishness and stupid mistakes. He now surrounds himself with successful, unlifting people, both professionally and personally, and is looking toward a bright future.

The Applicant further mentions that he has received psychological counseling on three occasions. At his last session, it was advised to him that additional counseling would be beneficial, but that he appeared to be getting his life back on track with his new relationship with his girlfriend and by finishing his degree and focusing on his career. (*See* Applicant's Answer to the FORM dated September 7, 2005 and Applicant's Reply to the FORM dated April 17, 2006).

## 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 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.

Condition that could mitigate security concerns:

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 a 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 criminal conduct or drug abuse 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 criminal conduct (Guideline J) and drug abuse (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 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 J and H of the SOR.

The Applicant was 20 years old at the time he engaged in criminal conduct and reckless drug abuse, and he is still young, now at twenty four years of age. Just four years ago, he was involved in serious drug abuse involving different types of dangerous narcotics. The variety and frequency of use of these drugs together and separately were and are potentially addictive. During this period, the Applicant was also arrested and charged with several felonies. The seriousness of this conduct, considered together, continues to raise doubts about his judgment and reliability. It appears from his evidence that the Applicant has been drug free for at least four years. He states that he now lives according to a "Mission Statement" that he reads several times daily. The record contains no evidence from any independent, outside or unbiased party concerning the status of the Applicant's rehabilitation.

Given his extensive history of drug abuse, coupled with his criminal conduct, I cannot find that this conduct is over once and for all. Drug Abuse and Criminal Conduct is serious, irrational and not consistent with the attributes required to access classified information. Under the particular facts presented here, there is no assurance that he will remain drug free for an extended period. 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.

Under Drug Involvement, Guideline H, Disqualifying Condition (1) *any drug involvement*, and (2) *illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution* applies. None of the mitigating factors apply. Under Criminal Conduct, Guideline J, Disqualifying Conditions (1) *Allegations or admissions of 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 factors* apply. Taken together, Applicant's extensive history of drug abuse and his criminal conduct establishes that the exercise of poor judgment was not an aberration, but was a basic part of Applicant's character. Hopefully, the Applicant has made a permanent lifestyle change, is on the road to recovery, and will remain drug free. A security clearance is not warranted at this time. Accordingly Guidelines H and J are found against 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.

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.

Subpara. 2.i.: Against the Applicant.

Subpara. 2.j.: Against the Applicant.

Subpara. 2.k.: Against the Applicant.

Subpara. 2.l.: Against the Applicant.

Subpara. 2.m.: Against the Applicant.

Subpara. 2.n.: Against the Applicant.

Subpara. 2.o.: Against the Applicant.

Subpara. 2.p.: 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