

DATE: November 30, 2005

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-04211

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Candace L. Le'i, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

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

STATEMENT OF THE CASE

On July 21, 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 August 8, 2005, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on September 7, 2005. A notice of hearing was issued on September 16, 2005, scheduling the hearing for October 11, 2005. At the hearing the Government presented four exhibits. The Applicant presented five exhibits, called two witnesses, and testified on his own behalf. The official transcript (Tr.) was received on November 3, 2005.

FINDINGS OF FACT

The Applicant is 44 years old, single and has four years of college. He is employed by a defense contractor as an Electronic Engineer, and is seeking to retain his security clearance in connection with his 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 he has abused illegal substances.

In 1977, at the age of seventeen, while in junior high school, the Applicant began using marijuana. He used it two or three times on weekends with his friends. It made him dizzy and nauseated so he stopped using it. (Tr. p. 27).

In January 2004, the Applicant was granted an interim security clearance. In September 2004, the Applicant used marijuana again when he ran into a high school acquaintance that he had not seen in fifteen years. At the time, the Applicant was going through a stressful period in his life. His father had just passed away, his house had been burglarized, and his wife was going through counseling. His friend had offered to help with some remodeling on his house and offered him some marijuana. The Applicant took three drags on the marijuana cigarette and got violently ill. (Tr. p. 33). The following week, the Applicant underwent a random urinalysis at work and tested positive for marijuana. (See Government Exhibit 3). The Applicant was referred to his company's Employee Assistance Program (EAP) and referred for counseling. The Applicant completed the counseling. Applicant's substance abuse assessment indicates that he has no addiction history of either alcohol or illegal substances. (See Applicant's Exhibit B).

The Applicant's Senior Program Manager testified that company policy requires them to try to rehabilitate an employee on their first incident of illegal drug abuse by sending them to counseling and by constantly monitoring their progress. If the employee tests positive a second time, they are automatically terminated from their employment.

Since testing positive for marijuana in September 2004, the Applicant has been tested on at least five other occasions and the results have been negative. The Applicant is also subjected to regular random drug testing that will continue indefinitely.

The Applicant indicates that he has no intent of ever using marijuana again. He no longer associates with anyone that uses marijuana. He has learned from his mistakes. To deal with the pressures of life that he experiences now, he is more active, does a lot of hiking, motorcycle riding with his family who all have dirt bikes and is more involved in his daughter's school. He attends church and spends a lot more time with his children.

Two witnesses testified on the Applicant's behalf including his Senior Program Manager and the Chief Engineer at the range. Both of these individuals consider the Applicant to be an excellent worker, who is extremely reliable and trustworthy. (Tr. pp. 53-64).

Applicant's performance evaluation from October 2004 through September 2005, indicates that he either "exceeds" or "meets" the standards in each category. (See Applicant's Exhibit C).

Letters of recommendation from coworkers and friends of the Applicant attest to his high level of integrity, responsible nature, his good judgment, and his competence and expertise in the field. He is considered an asset to the work force. (See Applicant's Exhibit A).

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 him 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 his 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.

Disqualifying Conditions (1) *any drug abuse* and (2) *illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution* apply. Under the particular facts of this case, the Applicant's marijuana use was isolated. He first used it several times in junior high school in 1977. He used it again about twenty three years later in September 2004. He realizes that he made a stupid mistake when he used it last year and that he must never use it again. Since then, he has not used marijuana and had no intention of ever using any illegal drug again. He has matured and has learned to deal with stress by engaging in other more constructive things. He no longer associates with anyone who uses illegal drugs. He understands that the use of illegal drugs is prohibited by law and against DoD policies. He 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 September 2004, over a period of one year. Given the fact that the Applicant's isolated drug use occurred over a year 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. Mitigating conditions (1) *the drug involvement was not recent*, and (3) *a demonstrated intent not to abuse any drugs in the future* are applicable. Accordingly Guideline H is found for the Applicant.

On balance, it is concluded that the Applicant has overcome the Government's case opposing his 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.

Subpara. 1.b.: For the Applicant.

Subpara. 1.c.: 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