

DATE: April 27, 2000

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 99-0712

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY-ANDERSON

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On January 11, 2000, 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 March 24, 2000, in which he elected to have the case determined on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on February 28, 2000. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on March 9, 2000, and he submitted a response on March 24, 2000.

The case was assigned to the undersigned for resolution on April 13, 2000.

FINDINGS OF FACT

The Applicant is 37 years old, and is employed by a defense contractor. He 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 criterion in the SOR:

Paragraph 1 (Criterion E- Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, and an unwillingness to comply with rules and regulations.

In January 1997, the Applicant was terminated from a Federal civilian position for requesting sick leave under false pretenses, for falsifying his sign-in/sign out sheets, and for making false statements to his supervisor. It was discovered through an investigation that the Applicant was working for another company (Company A), while still trying to maintain his Federal employment. The Applicant admitted that he deliberately falsified his timecard by claiming he was sick for two days and unable to work, when in actuality he spent those days working at a new place of employment. He also admitted that on two other days, he deliberately falsified his timecard by signing in for duty and then leaving the office to work at his new job. He then returned at the end of the same two days to sign out indicating that he had worked. When confronted by his supervisor, the Applicant denied that he had other employment. (See, Government Exhibits 3, 6 and 7).

In March 1998, the Applicant falsified a resume he submitted to his current employer, Company B. He listed a company (Company C), he allegedly worked for from November 1994 through February 1996, when in fact he had never worked for Company C. (See, Government Exhibits 3, 5, and 8).

The Applicant completed an application for security clearance dated February 1, 1998, and was required to list his past employment activities, beginning with the present, and working back seven years. He was also required to list any Federal civilian service regardless of when it occurred. The Applicant indicated that he had been employed by the Federal Government and listed all but one of his past employers. (See, Government Exhibit 4, Question 11). The Applicant denies that he intentionally attempted to conceal the one employer he omitted on his application (Company D). The Applicant stated that he was employed for less than three weeks and simply did not recall the employment. (See, Government Exhibit 3). The Government has failed to offer evidence to the contrary. Accordingly, Subparagraph 1.c., is found for the Applicant.

The same security clearance application required the Applicant to indicate whether he had ever been fired from a job, quit a job after being told he would be fired, left a job by mutual agreement following allegations of misconduct, or left a job for other reasons under unfavorable circumstances. The Applicant answered "No". (See, Government Exhibit 4, Question 22). This was a false answer. The Applicant failed to list that he had been fired from Federal employment in January 1997. (See, Government Exhibit 5).

The Government further alleges that the Applicant failed to list on his security clearance application dated February 1, 1998, that in September 1998, he resigned from a job with Company E, in lieu of being fired or demoted due to his professional knowledge and abilities not measuring up to the standards required for the duties he was assigned. It is impossible for the Applicant to have listed employment that occurred after the date he completed the security clearance application. Accordingly, Subparagraph 1.e., is found for the Applicant.

I find the Applicant's response to Question 22 on his security clearance application of February 1, 1998, concerning his employment history was a deliberate attempt to conceal material information from the Government. (See, Subparagraph 1.d. of SOR and Government Exhibits 3, 4, 5, 6, 7). The Applicant's response to the question was completely false and inaccurate, and he knew or should have known that it was false when he provided it to 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.

Applicant's deliberate and intentional falsification on his security clearance application of February 1, 1998, as set forth in subparagraph 1.d., of the SOR, was a violation of 18 United States Code, Section 1001, a felony.

The Applicant now admits that he was wrong for not being truthful on his security clearance application. He is sorry and ashamed for what he did. (See, Applicant's Response to FORM, dated March 24, 2000).

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 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 E (Personal Conduct)

Conditions that could raise a security concern:

1. Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances;
2. the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or statute, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;
5. a pattern of dishonesty or rule violations.

Conditions that could mitigate security concerns include:

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 page 2-1, "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 guidelines established in the DOD Directive identify personal characteristics and conduct that 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 predicated 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. All 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 a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence that 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 personal conduct and criminal conduct that demonstrate 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 or her a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has engaged in dishonest and deceptive personal conduct (Guideline E) and criminal conduct (Guideline J). The Applicant has exhibited an extensive pattern of deception that cannot be excused under any circumstance. Requesting sick leave under false pretenses, falsifying a timecard, making false statements to a supervisor, falsifying a resume to obtain his current employment, and deliberately falsifying his security clearance application in an attempt to conceal material information concerning his employment history from the Government, all raise serious doubts about the Applicant's character, decency, integrity and honesty. The Applicant's personal conduct not only shows extremely poor judgment, unreliability and untrustworthiness, but by deliberately falsifying his security clearance application he has also violated a Federal criminal statute.

In addition, the Applicant's response to the File of Relevant Material leaves the record silent on the issue of rehabilitation. The Applicant has offered no independent evidence from people who know him well, such as family, friends, coworkers, or supervisors that could attest to his trustworthiness. It is not clear from the evidence that the Applicant has gained the necessary insight into the seriousness of his conduct, or whether he is prepared to behave honestly, and act responsibly in the future. Although he has expressed some remorse for his misconduct, there is no showing of rehabilitation to any extent. Consequently, I cannot conclude that he is now a reliable and trustworthy individual. Accordingly, Guidelines E and J are found against the Applicant.

Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation, which is sufficient to overcome the Government's case.

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, (except subparagraph 1.c. and 1.e.), 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.

Subpara. 1.c.: For the Applicant.

Subpara. 1.d.: Against the Applicant.

Subpara. 1.e.: For 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 interests of national security to grant or continue a security clearance for the Applicant.

DARLENE LOKEY-ANDERSON

Administrative Judge