

DATE: August 21, 2006

In Re:

SSN: -----

Applicant for Security Clearance

SCR Case No. 05-09176

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant did not intentionally falsify the security clearance application. Applicant's extensive history of criminal conduct, between 1993 and 2003, which includes two arrests and convictions for Driving While Intoxicated, five incidents of Possession of a Controlled Substance, seven incidents of Possession of Drug Paraphernalia, two warnings for Criminal Drugs, five incidents of Driving With a License Revoked, five incidents of Disorderly Conduct (three while attempting to elude police officers), Reckless Driving, Trespassing, Terroristic Threats, Criminal Conspiracy, Shop-lifting, Taking and Receiving Stolen Property, and several outstanding warrants, has not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

STATEMENT OF THE CASE

On January 9, 2006, 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 February 27, 2006, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on April 28, 2006. A notice of hearing was issued on May 15, 2006, and the hearing was scheduled for June 8, 2006. An amended notice of hearing was issued on May 18, 2006, scheduling the hearing for June 30, 2006. At the hearing the Government presented twelve exhibits. The Applicant presented seven exhibits and testified on his own behalf. The official transcript (Tr.) was received on July 14, 2006.

FINDINGS OF FACT

The following Findings of Facts are based on the Applicant's Answer to the SOR, the documents and the testimony. The

Applicant is 51 years old, unmarried, and has a Bachelor's Degree in Geology. He is employed as a Senior Systems Safety Engineer for a defense contractor. He seeks to obtain a security clearance in connection with his employment in the defense sector.

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.

The Applicant has a long history of criminal conduct that occurred during a ten year period between 1993 and 2003. Those arrests, citations and warnings are set forth in chronological order below.

On January 31, 1993, he was arrested and charged with (1) Possession a Controlled Substance, (2) Possession of Drug Paraphernalia, and (3) Driving Under Suspension. He was sentenced to probation without a verdict for the charge of Possession of a Controlled Substance. The remaining charges were dismissed. (*See Applicant's Answer to SOR*).

On August 25, 1994, the Applicant was arrested and charged with Use or Possession of Paraphernalia and Prohibited Acts/Possession of Cocaine. He pled guilty to both counts and was sentenced to probation and fined. (*See Applicant's Answer to SOR*).

On August 29, 1994, he was arrested and charged with Possession of a Controlled Substance and Possession of Paraphernalia. (*See Government Exhibit 7*). He pled guilty to the charges.

On December 13, 1994, the Applicant was arrested and charged with (1) Theft by Unlawful Taking (2) Receiving Stolen Property (3) Possession of a Controlled Substance, and (4) Possession of Drug Paraphernalia.

On September 24, 1995, he was arrested and charged with Disorderly Conduct and Use or Possession of Paraphernalia. (*See Government Exhibit 8*).

On October 1, 1995, the Applicant was arrested and charged with (1) Criminal Conspiracy, (2) Criminal Trespass, and (3) Prohibited Acts. (*See Applicant's Answer to SOR*).

On October 27, 1995, the Applicant was arrested and charged with Fleeing or Attempting to Elude a Police Office and Driving While Suspended or Revoked. (*See Government Exhibit 3*). He pled guilty to the charge of Driving While Suspended or Revoked. The other charges were dismissed.

On December 19, 1995, the Applicant was arrested and charged with Disorderly Conduct-Obscene Language. The Applicant was found guilty and sentenced to 90 days in jail. The conviction was upheld on appeal.

On December 22, 1995, the Applicant was issued a citation on the charge of Disorderly Conduct. (*See Applicant's Answer to SOR*).

On December 23, 1995, the Applicant was arrested and charged with (1) Disorderly Conduct (2) Manufacture/Deliver/Intent of Controlled Substance, (3) Use or Possession of Paraphernalia, and (4) Prohibited Acts. (*See Applicant's Answer to SOR*).

On December 27, 1995, the Applicant was arrested and charged with Disorderly Conduct - Unreasonable Noise. The case was ultimately dismissed. (*See Applicant's Answer to SOR*).

On December 28, 1995, a warrant was issued for his arrest and the Applicant was charged with Driving While Operator's Privileges Suspended or Revoked. The Applicant paid fines and costs in the amount of \$265.00. (*See Applicant's Answer to SOR*).

On January 10, 1996, the Applicant was arrested and charged with (1) Possession with Intent to Deliver, (2) Possession

of a Controlled Substance (Crack Cocaine), (3) Possession of Drug Paraphernalia, and (4) Driving Under Suspension. The Applicant was found guilty of counts 2, 3 and 4. The remaining charge was withdrawn. (*See* Government Exhibit 9).

On February 20, 1996, the Applicant was arrested and charged with Trespassing. The charges were later dismissed. (*See* Applicant's Answer to SOR).

On June 5, 1996, the Applicant was arrested and charged with (1) Disorderly Conduct, (2) Fleeing or Attempting to Elude Police Officers, (3) Reckless Endangerment, (4) Terroristic Threats, (5) Reckless Driving, (6) Driving Under Suspension, (7) Traffic Control Signals, and (8) Stop Signs. The Applicant pled guilty to all of the charges. (*See* Government Exhibit 10).

On July 16, 1996, the Applicant was arrested and charged with an outstanding warrant. (*See* Applicant's Answer to SOR).

On June 2, 1997, a warrant was issued for the Applicant's arrest for the charge of Driving While Operator's Privileges Suspended or Revoked. The Applicant paid fines and costs in the amount of \$1,041.00. (*See* Government Exhibit 3).

On August 22, 2002, the Applicant was arrested and charged with (1) Driving Under the Influence of Alcohol or Controlled Substance (DUI), (2) Driving Under Suspension, (3) Driving Under Foreign License Plate, and (4) Fast Conditions. The Applicant pled guilty to the Driving Under the Influence charge, the others were dismissed. (*See* Government Exhibit 11).

On March 28, 2003, the Applicant was issued a citation for Speeding and was fined \$49.00. He paid the fine.

On July 28, 2003, he received two warnings for Criminal Trespassing and for the charge of Theft-Shoplifting. He pled no contest and was fined \$326.00. (*See* Applicant's Answer to SOR).

On October 17, 2003, the Applicant was arrested for Driving While Intoxicated (DWI). He was convicted, fined and placed on probation for one year. (*See* Government Exhibit 2).

After graduating from college, the Applicant entered the United States Navy Officer Flight Training Program from 1975 until 1979. He became an Officer and received his wings in 1979, as a Naval Carrier Pilot. He then left the Navy, and from 1985 until 1995, worked as a Pilot for a commercial airline. During this period he was a DC-9 and M.D. 80 Captain. He admits that he was using cocaine and alcohol while he was a pilot for this commercial airline. (Tr. p. 45). In 1998, he began working for a defense contractor and then took several other temporary positions with other subcontractors before taking his current position in January 2004. He finally resigned from his position as a commercial pilot in 2000.

The Applicant attributes his history of excessive alcohol and drug abuse for causing his constant and repetitive criminal lifestyle. He disregarded the legal system and did about whatever he wanted to do. After ten years of this abuse, and finally realizing that alcohol and drugs were causing serious problems for him on the job and in his personal life, including anger management issues, and the loss of a great job, he entered a rehabilitation program. In 1994, he entered a 28-day inpatient treatment program. He also participated in multiple aftercare sessions, and nightly support groups. He found the program somewhat helpful but, following the program, he only remained sober for about a week or two and then relapsed. He entered a second rehabilitation program at the Veteran's Hospital, that later resulted in a relapse. In 1995, he entered a third rehabilitation program. Following this program, he again relapsed. His fourth and final rehabilitation program has seemed to be the most beneficial to him. He states that he has not used any illegal drugs since he last got out of jail in 1996. He continues to drink alcohol. He has a glass of wine after work as he prepares for dinner. (Tr. p. 79). The Applicant realizes that he can no longer drink and drive without consequences.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in conduct involving questionable judgment, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

The Applicant completed a security clearance application dated January 14, 2004. (*See* Government Exhibit 1). Question 24 of the application asked the Applicant if he has ever been charged with or convicted of any offenses related to alcohol and drugs. The Applicant answered, "Yes," and listed a DWI in 2002 and a DUI in 2003. However, he failed to list eight other arrests that occurred on January 10, 1996, December 25, 1995, September 24, 1995, December 13, 1994, August 29, 1994, August 25, 1994, January 31, 1994 and January 31, 1993. The Applicant claims that he misunderstood the question. He thought the question referred only to the last seven years when in fact it asked him if he had EVER been charged with or convicted of any offenses related to alcohol or drugs. The Applicant states that his company's security department told him to list only those incidents that occurred within the last seven years. (Tr. p. 50).

Question 26 of the same application asked the Applicant if in the last seven years had he been arrested for, charged with, or convicted of any offenses not listed modules 21,22, 23, 24, or 25. The Applicant failed to list the arrests that occurred on September 10, 2003, February 13, 2002, January 17, 2001 and June 2, 1997. Again the Applicant asserts that he misread the question and believed at the time that he was only to list those incidents that occurred within the last seven years.

Based upon the Applicant's numerous criminal offenses and the fact that he answered both of the questions in the affirmative, and listed some of his criminal offenses, but failed to list others, I do not believe that he intentionally attempted to falsify his security clearance application in response to questions 24 and 26. Strangely he remembered the older offenses rather than the more recent ones. However, from the evidence presented, I find that he was careless in answering the questions, but that he did not deliberately falsify the application or intend to conceal information from the Government. There are simply too many to remember.

Mitigation.

Applicant's Performance evaluation from the periods January 1, 2004, through December 31, 2004, and from January 2, 2005, through December 31, 2005, reflect favorable ratings. (*See* Applicant's Exhibit D).

Numerous letters of recommendation from the Applicant's Manager, coworkers, professional associates and military associates, including a Navy pilot who served with the Applicant, all consider the Applicant to be of good judgment, reliability and trustworthiness. (*See* Applicant's Exhibit G).

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 E (Personal Conduct)

Condition that could raise a security concern:

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;

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 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 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 an extensive history of criminal conduct (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 under Guideline J of the SOR.

The Applicant's criminal history occurred over a span of ten years from 1993 through 2003, that includes numerous arrests, charges and/or convictions. He was arrested on two occasions for Driving While Intoxicated, five occasions of Possession of a Controlled Substance, seven incidents of Possession of Drug Paraphernalia, two warnings for Criminal Drugs, five incidents of Driving With a License Revoked, five incidents of Disorderly Conduct (three while attempting to elude police officers), Reckless Driving, Trespassing, Terroristic Threats, Criminal Conspiracy, Shop-lifting, Taking and Receiving Stolen Property, and several outstanding warrants. Coupled with his history of alcohol and drug abuse, followed by four rehabilitation programs, and the fact that he still drinks, the Applicant's history and pattern of criminal conduct establishes that the exercise of poor judgment by him is not an aberration, but has been a basic part of Applicant's character for almost all of his adult life.

Under Guideline J (Criminal Conduct), Disqualifying Conditions (1) *any criminal conduct, regardless of whether the person has been formally charged* and (2) *a single serious crime or multiple lesser offenses* are clearly applicable. None of the mitigating conditions apply. The Applicant's behavior indicates a pattern of intentional illegal or irresponsible conduct that raises serious doubt about his judgment, reliability and trustworthiness. The Applicant's last arrest for criminal conduct occurred in 2003, just three years ago. Since he attributes his criminal behavior to his history of alcohol and drug abuse and he continues to consume alcohol, the risk is great that he will continue his criminal ways. In the context of so many criminal acts over so long a period, there is no substantive indication of a fundamental change in the Applicant's thinking process or character. On this basis, I conclude that the criminal conduct concerns remain current and are clearly not an isolated incident (Mitigating Condition 1 and 2). There is also no clear indication of the Applicant's rehabilitation. Accordingly Guideline J is 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 of the SOR.

As stated above, Paragraph 2 is found for the Applicant.

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.: Against the Applicant.

Subpara. 1.d.: Against the Applicant.

Subpara. 1.e.: Against the Applicant.

Subpara. 1.f.: Against the Applicant.

Subpara. 1.g.: Against the Applicant.

Subpara. 1.h.: Against the Applicant.

Subpara. 1.i.: Against the Applicant.

Subpara. 1.j.: Against the Applicant.

Subpara. 1.k.: Against the Applicant.

Subpara. 1.l.: Against the Applicant.

Subpara. 1.m.: Against the Applicant.

Subpara. 1.n.: Against the Applicant.

Subpara. 1.o.: Against the Applicant.

Subpara. 1.p.: Against the Applicant.

Subpara. 1.q.: Against the Applicant.

Subpara. 1.r.: Against the Applicant.

Subpara. 1.s.: Against the Applicant.

Subpara. 1.t.: Against the Applicant.

Subpara. 1.u.: Against the Applicant.

Subpara. 1.v.: Against the Applicant.

Subpara. 1.w.: Against the Applicant.

Subpara. 1.x.: Against the Applicant.

Subpara. 1.y.: Against the Applicant.

Subpara. 1.z.: Against the Applicant.

Paragraph 2: For the Applicant.

Subpara. 2.a.: For the Applicant.

3.b.: For 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