

November 8, 1996

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In Re:

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SSN: -----

Applicant for Security Clearance

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DOHA OSD Case No. 95-0923

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

Appearances

FOR THE GOVERNMENT FOR THE APPLICANT

Martin H. Mogul, Esquire Robert G. Bernstein, Esquire

Department Counsel

**STATEMENT OF THE CASE**

On February 12, 1996, 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 the attached Statement of Reasons (SOR) to ----- (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 7, 1996. This case was assigned to the undersigned on June 13, 1996, and a Notice of Hearing was issued on May 15, 1996.

A hearing was held on August 20, 1996, at which the Government presented five documentary exhibits and called two witnesses to testify. The Applicant presented two documentary exhibits and called three witnesses to testify. The

Applicant also testified on her own behalf.

The official transcript was received on August 30, 1996.

## **FINDINGS OF FACT**

The Applicant is 27 years old, and she has a high school diploma. She is employed by a defense contractor as a Radio Operator and Supervisor, and she seeks a Confidential-Level security clearance in connection with her employment.

The Government opposes the Applicant's request for a continued security clearance, on the basis of allegations set forth in the attached Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and criterion in the SOR:

Paragraph 1 (Criterion H - Drug Abuse). The Government alleges that the Applicant is ineligible for clearance because she abuses illegal substances.

The Applicant admits to abusing several illegal substances during the period from 1985 until at least 1991. She used marijuana for the first time in 1985, when she was sixteen years old. At the hearing, the Applicant testified that she used marijuana a total of four or five times. (Tr. Pg. 22). In her sworn statement to the Defense Investigative Service dated July 20, 1985, she indicated she used marijuana weekly to quarterly depending on the people she was with and the parties she attended. (Government Exhibit 2). The Special Agent who interviewed the Applicant and took her sworn statement testified that the Applicant explained her marijuana usage as occurring sporadically, with intervals of use and no use, occurring more than four or five times. (Tr. Pg. 96-98). The Applicant never purchased marijuana, her friends and associates provided it to her.

The Applicant used methamphetamine in 1988. The Applicant testified that she used methamphetamine during a two week period, when she was experiencing what she called a "nervous breakdown." (Tr. Pg. 42). In her sworn statement to the Defense Department, she indicates that she was using methamphetamine for a two month period, not two weeks. (Tr. Pg. 96-97).

In her sworn statement to the Defense Department the Applicant denied ever using cocaine. (Government Exhibit 2). At the hearing she testified that she believed cocaine and crank (methamphetamine) to be the same thing. (Tr. Pg. 47). Thus, she indicated that she may have used cocaine on one occasion in 1988, when she thought she was using methamphetamine.

The Applicant used LSD two times in 1985 and July 1989. In 1988, she used psilocybin mushrooms one time.

The Applicant admitted to closely associating with individuals in the past, including family and friends who were involved in various kinds of drug related activity. In her sworn statement to the Defense Department she indicated that as recent as August 1995, she walked into a garage and saw some friends of hers smoking marijuana from a "large pipe-styled bong." (Government Exhibit 3). At the hearing, the Applicant testified that she did not see anyone using marijuana and only smelled its aroma. She also testified that during her interview with the Special Agent she did not describe any type of apparatus used to smoke the marijuana and she is not even sure what a large, pipe-styled bong looks like. (Tr. Pg. 31 -32). The Special Agent who interviewed the Applicant testified at the hearing and contradicted the Applicant's testimony. (Tr. Pg.101-106).

The Applicant indicated that she never purchased, sold, or manufactured any illegal substance. She further stated that she no longer maintains any association with anyone who uses illegal drugs, and has no future intentions of using any illegal drug in the future.

Paragraph 2 (Criterion E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because she intentionally falsified material aspects of her personal background during the clearance screening process.

On March 15, 1994, the Applicant completed an application for security clearance which required that she indicate whether he has ever used any illegal drug. The Applicant responded that she had, and indicated that she tried marijuana

in 1986 and 1987. The Applicant failed to list all of her illegal drug involvement. Therefore, this was a false answer to a material question pertaining to the Applicant's use of illegal drugs. (Government Exhibit 1, question 20.a).

On July 20, 1995, the Applicant provided a signed sworn statement to a Special Agent from the Defense Investigative Service wherein she indicated that she chose not to reveal the truth on her security application because she did not want her employer to find out about her illegal drug past. (Government Exhibit 2). The Applicant testified at the hearing that she did not answer the questions truthfully on her security clearance application because she did not want her co-workers to learn about her illegal drug past, as it was none of their business. She further stated that she listed only those drugs which she believed would look least worse. However, she also testified that before finally submitting her security clearance application she inquired and learned from a co-worker that she could privately submit information concerning her mental health treatment by sealed envelope. (Tr. Pg. 54-55).

In her sworn statement the Applicant stated that she had used marijuana from 1985 until July 1991, and denied ever using cocaine. (Government Exhibit 2). I do not find that the Applicant provided any false answers here. The Applicant clearly admitted in this statement that she used marijuana from 1985 to July 1991, and she had a good faith belief that she had not used cocaine since she believed cocaine and crank (methamphetamine) to be the same thing. There is no intent to falsify information to the Government and accordingly, allegation 2.(b.), is found for the Applicant.

Paragraph 3 (Criterion J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he knowingly and willfully violated the felony provisions of 18 USC 1001, a federal criminal statute.

As found above, the Applicant knowingly and wilfully provided false material information to DoD during the clearance screening process. In so doing, the Applicant violated Title 18, United States Code, Section 1001, a felony.

#### Mitigation.

The Applicant's witnesses, which included her supervisor, a coworker and friend, and her live-in boyfriend, testified that they have never observed the Applicant using illegal drugs. They also believe the Applicant to be reliable, and a hard worker who goes above and beyond the call of her duties to get her job done. Eighteen Letters of Reference from co-workers, neighbors and friends collectively reflect that the Applicant is an excellent employee and good friend who is fair, honest, ambitious, conscientious, precise and acutely aware of her responsibilities. (Applicant's Exhibit A).

The Applicant is obviously a very caring person exemplified by her care for her boyfriend's 76 year old quadruple amputee mother who recently passed away. She indicates that she has also been a good mother to her children.

#### 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 his 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:

#### Criterion 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 security concerns:

- (1) the drug abuse was not recent;
- (3) a demonstrated intent not to abuse any drugs in the future;

Criterion E (Personal Conduct)

Conditions 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 status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Conditions that could mitigate security concerns:

None.

Criterion 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 concerns:

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 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.

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 a day. The Government is therefore appropriately

concerned where available information indicates that an Applicant for clearance may be involved in repeated instances of off-duty drug abuse, serious dishonesty and criminal conduct which demonstrates poor judgment, untrustworthiness or unreliability on the Applicant's part.

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. 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 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.

A pattern of dishonesty and the improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. The Government must be able to place a high degree of confidence in a security clearance holder to be honest at all times and abide by all security rules and regulations at all affairs, then there exists the possibility that he or she may demonstrate the same attitude towards security rules and regulations.

## **CONCLUSIONS**

In DOHA cases the Government has the initial burden to go forward with prima facie evidence in support of the factual and conclusionary allegations in the SOR. If the Government meets this initial obligation, 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 prima facie case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the interests of national security to grant him or her a security clearance.

In this case, the Government has met its initial burden of proving by prima facie evidence that the Applicant has provided false material information to the government on her security clearance application and in a sworn statement (Criterion E); that she has been involved with illegal substances (Criterion H); and has engaged in criminal conduct (Criterion J). The Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's prima facie case against her.

The Applicant testified at the hearing that she was not honest about her drug involvement on her security clearance application because she did not want her co-workers to know about it. However, I have reviewed the evidence and I do not find her explanation to be a credible excuse. The Applicant did not ask to submit the information privately, which she knew or should have known she could do, following her inquiry concerning her mental health information. Furthermore, she did not contact the Defense Investigative Service to discuss the inaccuracies. She simply provided the government with false information and left it as that. I find her falsifications to be intentional. Given the numerous inconsistencies between her testimony at the hearing, what she put down on the security application, and what she told the Defense Investigative Service; the Applicant can at best be described as "selectively vague." This pattern of dishonesty disqualifies her from access to classified information. Accordingly, Criterion E, allegation 2.(a.), is found against the Applicant.

As set forth above, with respect to Government's allegation 2.(b.), under Criterion E, I find for the Applicant.

The Applicant's involvement with illegal drugs ended in 1991, over five years ago and has been mitigated. She no longer uses illegal drugs or continues to associate with persons who do. Obviously, the Applicant used poor judgment by associating with persons who used illegal drugs even after she had stopped. She now appears to realize the significant risk she takes by associating with people who use illegal drugs. The Applicant has no intention of using any illegal drug in the future. Moreover, the Applicant is the mother of two who expresses an intent to set a good example for her children. Accordingly, I find for the Applicant with respect to Criterion H.

The Applicant's intentional concealment of her illegal drug involvement on her security questionnaire was a violation of Title 18, United States Code, Section 1001 which is a felony. This criminal conduct creates doubt about her judgment, reliability and trustworthiness. Accordingly, Criterion J is found against the Applicant.

The problem in this case is the fact that the Applicant was not candid, honest and up-front with the Government when she completed the security clearance application. In addition her lack of candor on the stand makes it impossible for me to say that she is rehabilitated. While the Applicant is not currently eligible for a security clearance, she has the capacity to make herself so. The Government relies heavily upon the integrity and honesty of clearance holders, and it is a negative factor for security clearance purposes where an Applicant has deliberately provided false information about the material aspects of his or her personal background.

On balance, it is concluded that the Applicant has failed to overcome the Government's prima facie case opposing his request for a continued security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1, 2 and 3 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: For the Applicant.

Subpara. 1.a.: For the Applicant.

Subpara. 1.b.: For the Applicant.

Subpara. 1.c.: For the Applicant.

Subpara. 1.d.: For the Applicant.

Subpara. 1.e.: For the Applicant.

Subpara. 1.f.: For the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: For the Applicant.

Paragraph 3: Against the Applicant.

Subpara. 3.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 interest of national security to grant or continue a security clearance for the Applicant.

DARLENE LOKEY ANDERSON

Administrative Judge