

December 31, 1996

In Re:

SSN: -----

Applicant for Security Clearance

)
)
)
)
)
)
)
)
)

DOHA OSD Case No. 96-0228

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

Appearances

FOR THE GOVERNMENT FOR THE APPLICANT

Martin H, Mogul, Esquire *Pro Se*

Department Counsel

STATEMENT OF THE CASE

On May 1, 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 May 8, 1996. This case was assigned to the undersigned on June 19, 1996, and a Notice of Hearing was issued on June 25, 1996.

A hearing was held on September 19, 1996, at which the Government presented four documentary exhibits. The Applicant presented five documentary exhibits and testified on his own behalf.

The official transcript was received on September 30, 1996.

FINDINGS OF FACT

The Applicant is 50 years old, single, and he has a high school diploma with some college. He is employed by a defense contractor as a Flight Test Mechanic, and he seeks to retain a Secret-Level security clearance previously granted 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 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 Involvement). The Government alleges that the Applicant is ineligible for clearance because he abuses illegal substances.

The Applicant has admitted to abusing a variety of illegal drugs from about 1966 to at least October 1995. He began using marijuana in 1966 on a weekend basis. This pattern of use continued until October 1995, except for a short period from July 1993 to April 1994 when the Applicant was attending a court ordered diversion program. The Applicant testified that the effects of the marijuana helped him to relax. Most of the time the marijuana was given to him, but from 1966 until 1978 on some occasions he purchased small quantities, about ten marijuana cigarettes at a time. The Applicant has never used marijuana on the job, nor does he believe it has effected his job performance or attendance.

On December 12, 1973, the Applicant was arrested for Possession of Marijuana. The Applicant testified that his vehicle was stopped by the police and marijuana was found under the seat. The Applicant stated that he did not know the marijuana was under the seat because it was not his. As a result of a plea bargain, the Applicant was placed in a Drug Diversion Program for six months and charged with Open Container in Vehicle.

On July 27, 1993, the Applicant was arrested again for Possession of A Controlled Substance, a felony, in the state where it occurred, and Possession of arijuana, one ounce or less, a misdemeanor. On this occasion, the Applicant's girlfriend was driving the Applicant's vehicle when they were pulled over for speeding. When the Applicant's girlfriend could not produce her drivers license, a search by the police revealed an unloaded revolver and a bag of marijuana. As a result of this arrest, the Applicant was placed in a one year Drug Diversion Program and was also required to participate in a drug counseling program. The Applicant successfully completed a twenty week Drug Diversion Program and was able to completely abstain from the use of illegal drugs. However, after completing the program he returned to using illegal drugs, but reduced his use of marijuana.

In 1967, while in the military, the Applicant began using methamphetamine. He used methamphetamine on a monthly basis up until July 1993. During this period, the Applicant also purchased methamphetamine in the powder and pill form spending between ten and twenty dollars on each purchase.

In 1985, while at a party, the Applicant tried cocaine one time. He did not like it and has not used it since then. The Applicant also used LSD on two occasions in the 1960s. He has not used it since then.

The Applicant was granted a security clearance from the Department of Defense in January 1980. The Applicant understood at the time he received his security clearance that the Department of Defense prohibited the use of illegal drugs, however he continued to use and purchase marijuana, methamphetamine and cocaine. The Applicant has not used any illegal drug since October 1995 and has no intention of any future use.

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

On September 15, 1986, the Applicant completed an application for security clearance which required him to indicate whether he has ever used any illegal drug, and whether he has ever purchased or sold any illegal drug. The Applicant responded "no" to both questions. (See, Applicant's Answer to SOR and Tr. Pg. 27-28). These were false answers to

material questions pertaining to the Applicant's former involvement with illegal substances. The Applicant stated that he falsified the application because he was in fear that he might not obtain his security clearance, and might ultimately lose his job. (Tr. pg. 28).

During an interview with the Defense Investigative Service on December 9, 1986, the Applicant stated that he had nothing more to do with dangerous drugs or illegal substances since December 1973. (See, Applicant's Answer to SOR and Tr. Pg. 28-29). This was a false statement to a material question pertaining to the Applicant's involvement with illegal drugs. The Applicant stated that he was not honest in his sworn statement for the same reasons he falsified his security clearance application, for fear that he might not obtain his security clearance, and might ultimately lose his job. (Tr. Pg. 29).

On February 8, 1990, the Applicant completed an application for security clearance which required him to indicate whether he ever used any illegal drug, and whether he has ever purchased or sold any illegal drug. The Applicant responded "no" to both questions. (See, Applicant's Answer to SOR). These were false answers to material questions pertaining to the Applicant's involvement with illegal substances. The Applicant stated that he falsified the application because he was in fear that he might not obtain his security clearance, and might ultimately lose his job. (Tr. Pg. 29).

On March 29, 1995, the Applicant completed an application for security clearance which required him to indicate whether he has ever used any illegal drug, and whether he has ever purchased or sold any illegal drug. The Applicant responded "no" to both questions. (Government Exhibit 1, Questions 22(a) and 22(b)). These were false answers to material questions pertaining to the Applicant's involvement with illegal substances. The Applicant stated that he falsified the application because he was in fear that he might not obtain his security clearance, and might ultimately lose his job. (Tr. Pg. 38).

The same security clearance application also asked the Applicant to indicate whether he had ever been arrested. The Applicant answered "yes" and listed his arrests of December 1973 for Possession of Marijuana and an arrest of 1982 for Driving Under the Influence. (Government Exhibit 1, Question 21(a)). The Applicant did not list his arrest of 1993 for Possession of a Controlled Substance, a felony, and Possession of Marijuana, a misdemeanor. The Applicant explained that there were two reasons he failed to list his arrest of 1993 on his application. First, his attorney told him that the charges were dismissed and that there would be no record of the arrest. Second, the Applicant was concerned that if he did list the information, it might result in the loss of his security clearance. Given the fact that the Applicant had some uncertainty concerning whether he was required to list the arrest, I do not find that there is sufficient evidence in the record to support that the Applicant concealed this material information in bad faith. Accordingly, allegation 2.f., 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.

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, proceeding, manufacture, purchase , sale or distribution.

Conditions that could mitigate security concerns:

None.

Criterion 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;

(3) deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination.

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.

Condition 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.

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."

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 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 illegal drug abuse, serious dishonesty and criminal conduct which demonstrates poor judgment, untrustworthiness or unreliability on the Applicant's part.

Furthermore, the Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places. If an Applicant has demonstrated a lack of respect for the law in his private affairs, then there exists the possibility that he or she may demonstrate the same attitude towards security rules and regulations.

In this case, the Government has met its initial burden of proving by prima facie evidence that the Applicant has used illegal drugs (Criterion H); that he falsified two security clearance questionnaires, and lied during an interview with the Defense Investigative Service by concealing material information concerning his past illegal drug use (Criterion E); and that he 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 him.

The record evidence clearly shows that the Applicant has violated the law by using and purchasing marijuana, methamphetamine, cocaine and LSD at various times extending over a period of thirty years, beginning in 1966 and continuing until October 1995. Furthermore, since 1980, the Applicant has violated DoD policy by using illegal drugs while holding a security clearance. However, with respect to the Applicant's use of cocaine and LSD, I find that this conduct occurred in the distant past, over ten years ago, and is no longer of security significance. Accordingly, allegations 1.g. and 1.h., are found for the Applicant.

The Applicant's long term involvement with methamphetamine and marijuana is more recent and more serious. After more than twenty years of methamphetamine use, the Applicant last used methamphetamine in July 1993, just three and a half years ago. The Applicant admitted that he became addicted to marijuana over the thirty years he used it. It was only as recently as October 1995, just 14 months ago, that the Applicant last used marijuana and decided to stop using illegal drugs altogether. The Applicant is commended for his recent effort to completely abstain from illegal drug use.

However, given the fact that he has only been drug free for 14 months, and is battling a thirty year addiction to marijuana, there has not been sufficient time in rehabilitation to show that the Applicant will not return to his old ways. This does not, however, preclude the Applicant from applying for a security clearance at some future date when there is additional evidence to support his full rehabilitation. Accordingly, I find against the Applicant under Criterion H, (Drug Involvement).

Much more troubling in this case is the fact that the Applicant repeatedly lied to the Government by failing to disclose his illegal drug use on three different security clearance applications and also during an interview with the Defense Investigative Service. This conduct is clearly in violation of Title 18, United States Code, Section 1001. On his 1986 security clearance application, his 1990 application and his most recent 1995 application, the Applicant intentionally and deliberately provided the Government with false information to hide his continuing illegal drug involvement. This conduct is inexcusable. The Government relies heavily upon the integrity and honesty of clearance holders. 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. In this case, the Applicant obviously knew for many years that he had not been honest when he provided false information to the Government. The Applicant never came forward to tell the truth. The Applicant was essentially granted a security clearance back in 1980 under false pretenses and did not have the integrity to come forward to tell the truth until he was backed into a corner by the Defense Department. This Applicant clearly does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Criterion E, (Personal Conduct); and Criteria J, (Criminal Conduct).

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: 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.: For the Applicant.

Subpara. 1.h.: For the Applicant.

Subpara. 1.i.: 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.: For the Applicant.

Subpara. 2.g.: Against 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 national interests to grant or continue a security clearance for the Applicant.

DARLENE LOKEY-ANDERSON

Administrative Judge