

December 31, 1996

In Re:

SSN: -----

Applicant for Security Clearance

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DOHA OSD Case No. 96-0363

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 20, 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 July 9, 1996, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on September 13, 1996. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on October 4, 1996, and he submitted no reply.

This case was assigned to the undersigned for resolution on November 6, 1996.

FINDINGS OF FACT

The Applicant is 35 years old, and he is employed by a defense contractor. He seeks a DoD security clearance in connection with his employment in the defense industry.

The Government opposes the Applicant's request for a 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 began using marijuana in 1976 while in high school. He used marijuana about thirty times before joining the military in 1980. From 1980 through January 1994, (the duration of his active military career), the Applicant completely abstained from all illegal drug use. In March 1994, however, the Applicant started using marijuana again, and used it on at least three separate occasions. The Applicant last used marijuana in February 1996. During the periods he used marijuana, the Applicant purchased it for his own use. The Applicant has never sold marijuana.

The Applicant initially indicated in a statement to the Defense Investigative Service dated March 22, 1996, that he could not state with 100% certainty that he would not use marijuana again. (Government Exhibit 6.) However, he has reconsidered his position and expresses that he is now committed to never using marijuana or any illegal drug again. (Government Exhibit 3.)

Instead of using illegal drugs, the Applicant now spends his time being more productive by keeping busy with his hobbies and other interests. He realizes that using illegal drugs is "stupid" and "self destructive". He now knows other alternatives to stress such as Narcotics Anonymous and Veterans Administration Counseling. (Government Exhibit 3.)

The Applicant also used LSD one time in the 1970's.

From February 2, 1994 to December 28, 1994, the Applicant received treatment for "Cannabis Abuse" at a Veterans Administration Facility. The Applicant does not believe that he was ever addicted to marijuana.

Paragraph 2 (Criterion G - Alcohol Consumption). The Government alleges that the Applicant is ineligible for clearance because he abuses intoxicants.

The Applicant began to drink beer at the young age of seventeen. He usually drank on the weekends. In 1980, when he joined the military, his drinking increased and became more constant. By this time, the Applicant was consuming six to twelve beers a night about two or three times per week.

Throughout his military career, (from 1980 until 1994), the Applicant abused alcohol. His excessive drinking became a serious problem which led to two alcohol related arrests and one detainment by police. In October 1983, the Applicant was first arrested and charged with Driving Under the Influence of Alcohol. The Applicant was found guilty and required to participate in an alcohol counseling program. After this arrest, the Applicant stopped drinking for about seven months. Although he was able to abstain from alcohol for a while, it was not long before he was back to his regular drinking habits. In June 1993, the Applicant was detained by police for Disturbing the Peace. The Applicant had been drinking alcohol prior to being detained. No charges were filed and he was later released. In September 1993, The Applicant was arrested a second time for Driving Under the Influence, and Driving with a Blood Alcohol Content of .08% or above. The Applicant pled guilty, was fined \$1,174.00 and was placed on probation for three years. He was also required to attend a first conviction program.

The Applicant's drinking pattern was interrupted by brief periods of abstinence after each arrest, and during his treatment for his alcohol problem. From September 14, 1992 to January 28, 1993, the Applicant received outpatient treatment for his alcohol problem. He was diagnosed at that time as "Alcohol Dependant". From December 28, 1993 to

January 25, 1994, the Applicant received inpatient treatment for his alcohol addiction. This treatment was followed by an outpatient after care program that he attended from February 2, 1994 to December 28, 1994. He was last diagnosed with "Alcohol Abuse in remission". (Government Exhibit 8.)

The Applicant admits to drinking and driving on various occasions, however most of his drinking occurred at home. As a result of the Applicant's abusive drinking pattern, in 1994, the Applicant was found unfit for military duty and was honorably discharged.

The Applicant last drank to the point of intoxication in November 1995. Although the Applicant acknowledges his alcohol problem, he continues to use alcohol. He now believes that he has his drinking under control. (Government Exhibit 5.)

Paragraph 3 (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 March 3, 1995, the Applicant completed an application for security clearance which asked the Applicant to indicate whether he had ever been arrested. The Applicant answered "yes" and listed his two arrests for Driving Under the Influence, and a nonjudicial punishment he received while in the military. (Government Exhibit 4, Question 18(a).) The Government contends that the Applicant intentionally failed to list an arrest for Disturbing the Peace. The Applicant denies this arrest and after a careful review of the record, I do not find that there is sufficient evidence in the record to support this allegation. Accordingly, allegation 3.(a.), is found for the Applicant.

In the same security clearance application the Applicant was required to indicate whether he has ever used, purchased or sold any illegal drug. The Applicant answered "yes" that he has used an illegal drug, "that he experimented with marijuana in 1976". (See, Government Exhibit 4, Question 20(a).) The Applicant also answered "no", that he has not purchased any illegal drugs. (Government Exhibit 4, Question 20.(b).) These were false answers to a material questions pertaining to the Applicant's former involvement with illegal substances. The Applicant stated that he falsified the application because he was embarrassed and in fear of jeopardizing his security clearance and losing his job. (Government Exhibit 3.)

In a sworn statement before the Defense Investigative Service dated November 13, 1995, the Applicant stated that he experimented with marijuana in 1976, and denied ever purchasing any illegal drug, and denied participating in drug counseling. (Government Exhibit 7.) These were false answers to material questions pertaining to the Applicant's former involvement with illegal substances. Again, the Applicant falsified the application because he was ashamed and in fear of jeopardizing his security clearance and losing his job. (Government Exhibit 3.)

During an interview with the Defense Investigative Service on March 22, 1996, the Applicant stated that he has not used or purchased marijuana since June 1994. (Government Exhibit 3.) This was a false statement to a material question pertaining to the Applicant's involvement with illegal drugs. The Applicant was not honest in his sworn statement for the same reasons he falsified his security clearance application, because he was ashamed, and in fear of jeopardizing his security clearance and losing his job. (Government Exhibit 3.)

Paragraph 4 (Criterion J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he knowingly and willfully violated 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:

- (1) the drug involvement was not recent;
- (2) the drug involvement was an isolated or infrequent event;
- (3) a demonstrated intent not to abuse any drugs in the future.

Criterion G (Alcohol Consumption)

Conditions that could raise a security concern:

- (1) alcohol-related incidents away from work, such as driving under the influence....
- (4) habitual or binge consumption of alcohol to the point of impaired judgement.

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.

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 and alcohol 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.

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 has abused alcohol to excess (Criterion G); that he falsified a security clearance questionnaire, a sworn statement 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 at various times extending over a period of twenty years, beginning in 1976 and continuing until at least February 1996. The Applicant's one time use of LSD was a single isolated incident which occurred over thirty-five years ago and is not worthy of mention. The Applicant appears sincere in his statement that he now realizes that using illegal drugs is stupid and self destructive, and that he has no intentions of ever using any illegal drugs again. With respect to the Applicant's use of illegal drugs, I find that this conduct last occurred almost a year ago, and is no longer of security significance. Accordingly, Criterion H, (Drug Involvement), is found for the Applicant.

The Applicant's long term involvement with alcohol abuse is more serious. The Applicant is an alcoholic who only recently started to realize the severity of his problem. The Applicant's abusive drinking pattern has led to two alcohol related arrests, several treatment programs and has curtailed his military career. However, the Applicant believes that he can continue to drink and that he has his problem under control. The Applicant has been diagnosed by competent medical authority as "alcohol dependant." He last became intoxicated in November 1995, just fourteen months ago. Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness. 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.

Given the fact that the Applicant continues to use alcohol and was last intoxicated just fourteen months ago, there has not been sufficient time in rehabilitation to show that the Applicant will not return to his old ways. I do not find that the Applicant shows good judgment with respect to his continued use of alcohol. 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 G, (Alcohol Consumption).

Equally as troubling in this case is the fact that the Applicant repeatedly lied to the Government by failing to disclose the true extent of his illegal drug use on his security clearance application, in a sworn statement and during an interview with the Defense Investigative Service. This conduct is clearly in violation of Title 18, United States Code, Section 1001. The Applicant's attempt to hide his illegal drug use was a material falsification that was done intentionally and deliberately. This conduct is inexcusable. Again, 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. Based upon this conduct, 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, 3 and 4 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.

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.: Against the Applicant.

Subpara. 2.g.: Against the Applicant.

Subpara. 2. h.: Against the Applicant.

Paragraph 3: Against the Applicant.

Subpara. 3.a.: For the Applicant.

Subpara. 3.b.: Against the Applicant.

Subpara. 3.c.: Against the Applicant.

Subpara. 3.d. Against the Applicant.

Subpara. 3.e.: Against the Applicant.

Paragraph 4: Against the Applicant.

Subpara. 4.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