

November 19, 1996

In Re:

-----

SSN: -----

Applicant for Security Clearance

-----

ISCR OSD Case No. 96-0475

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

Appearances

FOR THE GOVERNMENT FOR THE APPLICANT

Melvin A. Howry, Esquire *Pro Se*

Department Counsel

**STATEMENT OF THE CASE**

On July 26, 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 September 12, 1996, in which she 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 23, 1996. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on September 30, 1996, and she submitted a reply on October 15, 1996.

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

**FINDINGS OF FACT**

The Applicant is 36 years old. She is employed by a defense contractor and she seeks to obtain a Secret-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 Involvement). The Government alleges that the Applicant is ineligible for clearance because she abuses illegal substances.

The Applicant admits to a history of marijuana use beginning in 1981, while in college. From 1981 to until 1983, the Applicant smoked marijuana about twice per month. The Applicant did not use marijuana again until 1992, when her husband died, which was an extremely difficult period in her life. From 1992 until November 1995, the Applicant used marijuana at times on a daily basis. In her sworn statement to the Defense Department the Applicant indicated that the marijuana gave her a calming effect. The Applicant states that she last used marijuana in November 1995, even though she admits to a one time slip up in arch 1996. The Applicant also purchased marijuana from November 1992 to November 1995. (Government Exhibit 5).

The Applicant states that when she became pregnant, she made a commitment to quit using marijuana altogether and live a drug-free lifestyle. To assist her in maintaining her drug-free lifestyle, the Applicant has sought out counseling, which she receives twice a month. She indicates that through counseling she has learned healthy, non drug use mechanisms to cope with any stress or trauma in her life. The Applicant further indicates that she will never use any illegal drug again.

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 November 9, 1995, the Applicant completed an application for security clearance which required her to indicate whether she has ever used any illegal drug, and whether she has ever purchased or sold any illegal drug. The Applicant responded "no" to both questions. (Government Exhibit 4, Questions 20a. and 20b.)

These were false answers to material questions pertaining to the Applicant's former involvement with illegal substances. The Applicant subsequently came forward on her own volition and admitted that they were false. She stated that she falsified the application because she was in fear that she might not obtain her security clearance, and that she might ultimately lose her job. (Government Exhibit 5).

The Applicant stated that she realized she had not been up-front and honest with the government when she initially completed the security clearance application. When she met with the Defense Department in May 1996, she corrected the inaccuracies.

In her sworn statement to the Defense Investigative Service on May 9, 1996, the Applicant stated that she last used marijuana in November 1995. (Government Exhibit 5). In her answer to the SOR, the Applicant explained that she completely forgot about her one time slip up in March 1996, and considers her last use of marijuana to have occurred in November 1995. She further indicated that she did not deliberately intend to provide false or misleading information. (Government Exhibit 3). Given these facts, I do not find that the Applicant intentionally sought to conceal information or falsify the statement.

Paragraph 3 (Criterion J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because she 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;<sup>(1)</sup>
- (3) a demonstrated intent not to abuse any drugs in the future;

### 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.

#### Conditions that could mitigate security concerns:

- (2) the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;
- (3) the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts.

### 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:

- (2) the crime was an isolated incident;

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.

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, or criminal conduct which demonstrates poor judgment 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 an illegal drug (Criterion H); that she falsified a security clearance questionnaire by concealing material information concerning the extent of her illegal drug use (Criterion E); and has engaged in criminal conduct (Criterion J).

The record evidence shows that the Applicant clearly disrespects the law by using and purchasing marijuana from 1981 to 1983, and again from November 1992 until November 1995. The frequency of her marijuana use qualifies her as "a regular abuser." However, the Applicant stopped using marijuana in November 1995, and expresses a strong commitment to remain drug-free. Although the Applicant had a minor slip up in March 1996, it was an isolated incident that she says will never reoccur. Given the fact that the Applicant's regular use of marijuana last occurred in November 1995, a year ago, I find that this conduct occurred in the distant past, and it is presently of no security significance. Accordingly, Criterion H, (Drug Involvement) is found for the Applicant.

Furthermore, although the Applicant initially failed to disclose her marijuana use on her security clearance application, which is a violation of Title 18, United States Code, Section 1001, she exhibited good faith by coming forward to correct the falsification before being confronted with the facts. The Government relies heavily upon the integrity and honesty of clearance holders. Although 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, there is a provision that mitigates the security concern when one voluntarily comes forward to tell the truth after lying. In this case, the Applicant obviously knew she had not been honest when she provided false information to the Government and had the integrity to come forward to tell the truth. Accordingly, the Applicant has met her ultimate burden of persuasion under Criterion E, (Personal Conduct) and Criterion J, (Criminal Conduct).

On balance, it is concluded that the Applicant has overcome the Government's prima facie case opposing her request for a security clearance. Accordingly, the evidence supports a finding for 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.

Paragraph 2: For the Applicant.

Subpara. 2.a.: For the Applicant.

Subpara. 2.b.: For the Applicant.

Paragraph 3: For the Applicant.

Subpara. 3.a.: For the Applicant.

### **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

DARLENE LOKEY-ANDERSON

Administrative Judge

1. I consider the Applicant's one time slip up in March 1996 to be an isolated incident without the possibility of recurrence due to her apparently sincere commitment to a drug-free lifestyle. The Applicant's last regular use of marijuana occurred in November 1995.