

DATE: August 28, 1997

In Re:

SSN: -----

Applicant for Security Clearance

ISCR OSD Case No. 96-0528

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

Appearances

FOR THE GOVERNMENT

Melvin A. Howry, Esquire

Department Counsel

FOR THE APPLICANT

Robert W. Pierce

Personal Representative

STATEMENT OF THE CASE

On October 15, 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 November 11, 1996. This case was assigned to the undersigned on December 31, 1996, and a Notice of Hearing was issued on January 3, 1997.

A hearing was held on February 25, 1997, at which the Government presented nine documentary exhibits. The Applicant submitted three documentary exhibits, and she testified on her own behalf.

The official transcript was received on March 11, 1997.

FINDINGS OF FACT

The Applicant is forty-seven years old and married. She is employed by a defense contractor as a Lead Electronic Technician, and she is applying for a Secret level security clearance in connection with her employment.

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 she abuses illegal substances.

The Applicant has admitted to abusing heroin, at times daily, from about 1966, to at least 1994. The Applicant has also used cocaine in 1966, and again for a three month period in 1988. (See, Applicant's Answer to SOR).

In early 1960, the Applicant was introduced to a variety of illegal drugs. She met a man who used heroin on a daily basis, and started using it herself in 1966. By 1969, she was engaging in prostitution to help supply her habit. By 1970, she was addicted to heroin, and was using it on a daily basis. The Applicant's heroin addiction grew, and by 1974, she was spending about \$200.00 a day to supply her heroin habit. From 1974 until 1991, the Applicant continued to finance her addiction by engaging in prostitution, off and on.

The Applicant stated that from 1969 through 1975, she became entrenched in heroin, and stopped using all other substances. From the age of twenty until about twenty-six she traveled through life, indifferent as to any thoughts of the future. "I did not work, nor did I maintain any family contacts. I lived for the day, for the drug, anywhere and with anyone I could. My memory of this period is sketchy at best. The closest I can come to the truth is that I was at the bottom of a dark pit and had not yet begun to climb out." (See, Government Exhibit 3).

In her attempts to stop using heroin and get well, the Applicant entered a number of different methadone Maintenance Treatment Programs. Methadone Maintenance Treatment is a recognized and accepted form of heroin rehabilitation. The Applicant explained that the treatment works by bringing a person who is out of control into control by giving them a drug (methadone), which takes the craving for heroin away. (Tr. Pg. 52). The Applicant went through periods of trial and error, but eventually learned that as long as she was taking the methadone, she was able to stay off of heroin. However, she also found that as she detoxed off of the methadone, she would return to using heroin.

The Applicant entered her first Methadone Maintenance Treatment Program in 1980-1981.

In July 1984, the Applicant started another Methadone Maintenance Treatment Program, a twenty-one day in-patient treatment program, followed by an out-patient program until April 1986. (See, Government Exhibit 7). From October 24, 1986, until November 7, 1986; December 31, 1986 to January 20, 1987; and February 3, 1988 to June 20, 1988; the Applicant underwent outpatient detoxification services, and was administered methadone to stay off of the heroin. (See, Government Exhibits 4 and 8). From September 14, 1993, to October 11, 1994, the Applicant participated in another Methadone Maintenance Treatment Program. (See, Government Exhibit 6).

Although there were other episodes of relapse, the Applicant testified that she experienced three major setbacks in her attempts to kick her heroin habit. In 1978, she relapsed when she was taking care of her mother, who was dying of cancer. After her mother died, the Applicant was severely depressed, and started drinking heavily, which led to heroin. The Applicant explained that she would try to detox, but when she saw a problem, she would run back to the heroin. (Tr. Pg. 63). Then, in 1988, at the height of her addiction, she lost her job because she was back on heroin. At this point, the Applicant had no hope and felt like giving up on trying to salvage her life. Eventually, she picked herself up, went back on the methadone, and stopped using heroin.

In 1991, the Applicant relapsed again, but went right back to her Methadone Maintenance Treatment Program. She worked the program continuously until 1994, when she slipped again.

The Applicant began her most recent Methadone Maintenance Treatment Program on November 21, 1994. Since then, she has also received monthly individual counseling sessions. The Applicant is presently lowering her dosage of methadone, and will continue to work towards that goal. (See, Applicant's Exhibit B). The Applicant intends to stay on the methadone medication and in treatment for the rest of her life if necessary. (Tr. Pg. 65). The Applicant has not used any heroin since November 1994, and has no intentions of ever using any illegal drug again.

Over the twenty-four year period that the Applicant used heroin, she was arrested on ten separate occasions for drug related offenses. Most of the arrests resulted in her conviction, and she was either sentenced to jail, fined, or both. (See, Government Exhibit 9).

The Applicant was arrested on April 28, 1968, for (1) Track Marks, and (2) Possession of Dangerous Drugs. The charges were subsequently dismissed.

On October 28, 1968, the Applicant was arrested for (1) Suspicion of a Felony, (2) Track marks, and (3) Possession of a Dangerous Drug. The charges were subsequently dismissed.

On July 24, 1974, the Applicant was arrested on for (1) Under the Influence of Drugs, (2) Possession of Heroin, and (3) Possession of Drug Paraphernalia.

On July 4, 1975, the Applicant was arrested, for Being Under the Influence of Narcotics (addict). The Applicant was sentenced to twenty-five days in jail.

On August 1, 1975, the Applicant was arrested, for (1) Under the Influence of Heroin, (2) Soliciting for Prostitution, and (3) Failure to Appear.

On August 20, 1975, the Applicant was arrested for (1) Failure to Appear, and (2) Being Under the Influence of Narcotics.

On December 26, 1988, the Applicant was arrested for (1) Under the Influence of a Controlled Substance (heroin), and (2) Giving False Identification to a Peace Officer. The Applicant pleaded guilty, and was sentenced to serve 180 days in jail, and placed on probation for two years.

On December 19, 1989, the Applicant was arrested for (1) Possession of Bad Check/Money Order, (2) Contempt of Court for Disobeying Court Order, (3) Contempt of Court for Disobeying a Court Order, (4) Giving False Identification to Peace Officer, and being (5) Under the Influence of a Controlled Substance (heroin). The Applicant was sentenced to serve 90 days in jail.

On February 25, 1991, the Applicant was arrested for being Under the influence of a Controlled Substance (heroin). The Applicant pleaded guilty and was sentenced to 365 days in jail.

On May 12, 1991, the Applicant was arrested for being (1) Under the Influence of a Controlled Substance (heroin), and (2) Giving False Identification to a Peace Officer. The Applicant pleaded guilty and was sentenced to 365 days in jail.

As a result of a felony probation violation in about 1977, the Applicant was sent to prison for almost one year, where she had time to reflect on her life. It was in prison that she decided that she was going to change her life around. At that point, the Applicant's desire to defeat her addiction became the major focus of her life. She also took electronic classes and learned to repair televisions in prison.

Mitigation.

Four letters of reference from the Applicant's supervisors, coworkers and friends, aver that the Applicant is a hard worker who is extremely honest, trustworthy, and reliable. She is also considered to be a valuable asset to the company, and has recently received a promotion. (See, Applicant's Exhibit A).

A letter from the Applicant's substance abuse counselor indicates that the Applicant has in fact been on methadone maintenance treatment for almost three years without any illicit drug use, and has begun a slow taper program. Her counselor also feels that she should remain on methadone maintenance until zero incidence of relapse is indicated. (See, Applicant's Exhibit B).

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 her 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.

Condition that could mitigate security concerns:

- (3) a demonstrated intent not to use illegal drugs in the future.

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 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 her 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). The Applicant, on the other hand, has introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's *prima facie* case against her.

Drug abuse is defined as the illegal or improper use, possession, transfer, sale or addiction to any controlled or psychoactive substance, narcotic, cannabis or other dangerous drug. 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 her private affairs, then there exists the possibility that an Applicant may demonstrate the same attitude towards security rules and regulations.

In this case, the Applicant abused heroin and cocaine and became addicted to them. I find that the Applicant's fairly recent extensive drug abuse is incompatible with the Applicant's security responsibilities. This is so because of the obvious potential for an unauthorized disclosure of defense secrets resulting from neglect or misadventure caused by the abuse of illegal drugs.

With respect to the Applicant's cocaine use which occurred in 1966, over thirty years ago, and in 1988, over nine years ago, it has not been repeated. I find that the cocaine use is in the distant past, and is no longer of security significance. Accordingly, allegation 1.m., is found for the Applicant.

The Applicant, however, has not successfully mitigated the Government's case. Given the Applicant's long history of heroin addiction, occurring over a twenty-eight year period, and her series of unsuccessful attempts to stop using the drug, I am not convinced that the Applicant has once and for all beaten the addiction. The Applicant's most recent relapse occurred in November 1994, less than three years ago. Prior to that she relapsed in 1991. The Applicant's testimony is credible, and so is her desire and intent to remain drug free. However, battling the addiction to heroin is obviously no easy chore, and additional time in rehabilitation would more amply guarantee the Government that the Applicant has in fact finally conquered her addiction.

Assuming the Applicant continues to follow her prescribed treatment program, and in fact remains completely clean from heroin, or any other illicit drug, she is not precluded from reapplying for a security clearance in the future. However, at this time it is much too early in her rehabilitation to ensure that she will not return to her old habits. The Applicant has only been completely drug free for shortly less than three years. The Applicant is commended for her efforts at turning her life around, and is encouraged to continue working towards a complete drug free lifestyle. It is evident that she has worked very hard to get to this point, and she has made significant progress toward showing that she can be trusted. However, at this time she does not meet the eligibility requirements for access to classified information. Accordingly, Criterion H is found against the Applicant.

On balance, it is concluded that the Applicant has not overcome the Government's *prima facie* case opposing her request for a continued security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 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.: 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.: For 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.

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