

DATE: February 9, 1998

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 96-0603

**DECISION OF ADMINISTRATIVE JUDGE**

**LOKEY-ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Department Counsel

**FOR APPLICANT**

*Pro Se*

**STATEMENT OF THE CASE**

On October 23, 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 February 4, 1997. This case was assigned to the undersigned on April 22, 1997, and a Notice of Hearing was issued on April 23, 1997.

A hearing was held on May 20, 1997, at which the Government presented seven documentary exhibits. The Applicant testified on his own behalf. The Applicant submitted one Post Hearing Exhibit.

The last official transcript was received on May 30, 1997.

**FINDINGS OF FACT**

The Applicant is 44 years old, married, and has a high school diploma. He is employed by a defense contractor as an Electronic Technician, and he seeks a Secret-level security clearance in connection with his 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 he abuses illegal substances.

The Applicant has admitted to being addicted to marijuana, cocaine and alcohol. The Applicant was introduced to marijuana while in the military, and used it at varying frequencies, from every other day to once a week, over a period of twenty five years, from 1970 to at least July 1995. During this period, he purchased it and usually spent between \$10.00 and \$20.00 dollars on each purchase. The Applicant last used marijuana a couple of weeks before the hearing, although he regrets using it. (Tr. Pg. 20). The Applicant has never sold marijuana, and has no intention of ever using it again.

The Applicant also used and purchased cocaine, including crack cocaine, from 1981 until July 1995. The Applicant used cocaine once every couple of weeks, on payday, and then through the weekends, but never daily. He would normally smoke it through a pipe. By 1988, the Applicant was spending about \$300.00 a month on his cocaine habit. He last used cocaine or crack cocaine in July 1995.

On August 26, 1972, the Applicant was arrested and charged with Possession of Marijuana. The Applicant spent the weekend in jail.

On March 10, 1975, the Applicant was arrested for the Sale or Transporting of Marijuana, a felony, and Unauthorized Possession of Marijuana. The Applicant had purchased some marijuana for another person. The Applicant pled no contest, was sentenced to three weekends in jail, fined, required to complete an alcohol education program and was placed on probation for three years.

On January 28, 1980, the Applicant was arrested and charged with Drunk Driving and Driving Without a License. The Applicant had been drinking and smoking marijuana prior to the arrest. The Applicant pled no contest, was sentenced to 180 days in jail (suspended), fined, required to attend an alcohol awareness course and was placed on probation three years.

The Applicant continued to use marijuana and cocaine after being granted a security clearance on April 14, 1983, from the Department of Defense.

In 1988, the Applicant's drug habit had gotten so bad that he began experiencing financial problems. He was also unhappy with his life, and the direction it was heading. With encouragement from his wife, he enrolled in a three week treatment program. From September 12, 1988, until October 3, 1988, the Applicant received inpatient treatment for his cocaine habit. It was during this first treatment program that he was diagnosed with cocaine dependence, continuous. Although he remained completely drug free during the treatment program, he soon returned to using cocaine and marijuana.

From June 1993, to July 1994, the Applicant again sought help for his drug addiction, this time, from his Employee Assistance Program. The Employee Assistance Program advised the Applicant to enter an inpatient treatment program.

From July 12, 1993, through August 2, 1993, the Applicant entered an inpatient treatment program, and was diagnosed with cocaine dependence, cannabis abuse and alcohol dependence. Following this treatment, the Applicant remained sober for seventy days before he returned to using cocaine and alcohol. Realizing that he had little control over his drug habit, he checked himself into a sober living home, where he lived for about two and a half months. The Applicant was dismissed before completing the 90 day program for violating the rules by using cocaine and alcohol.

Following this treatment program, the Applicant was tested by his employer for drugs. The Applicant tested positive, and was required to obtain a medical release from his doctor before he could return to work.

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

The Applicant has admitted to a pattern of abusive drinking from 1970 to at least February 1996. The Applicant normally drank a six pack of beer each weekend day.

The Applicant received treatment for his drug and alcohol dependence in July 1993, and after three months of sobriety,

returned to his normal drinking pattern.

The Applicant currently drinks a 32 or 40 ounce beer on Thursdays, Fridays, and through the weekend. (Tr. Pg. 58). The Applicant has tried to stop drinking at various times. On each occasion, the Applicant returned to his abusive drinking after a short period of abstinence. The Applicant states that, "I'm still drinking; I want to stop drinking." (Tr. Pg. 59).

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.

In a sworn statement dated December 17, 1982, before a Special Agent from the Defense Investigative Service, the Applicant stated that he used marijuana from 1972 until December 1981, and that he has never used any other illegal drug. (See, Government Exhibit 3). The Applicant stated that he did not reveal the true extent of his illegal drug use for fear of losing his job and his security clearance. (Tr. Pg. 43).

The Applicant completed an application for security clearance dated September 29, 1995, which asked him if he had ever used any illegal drug. The Applicant answered "yes", and listed that he had used marijuana once in 1974. (See, Government 1, Question 20.a.). The Applicant claimed that he filled out the form and it was typed by someone else. He also stated that he did not reveal his use of cocaine for fear of losing his job and his security clearance. (Tr. Pg. 43).

The same application asked the Applicant whether he has ever purchased any illegal drug. The Applicant answered "yes", and listed that he had purchased marijuana once in 1975, for \$20.00. (See, Government Exhibit 1, Question 20.b.). Again, the Applicant stated that he did not reveal the true extent of his illegal drug use for fear of losing his job and his security clearance. (Tr. Pg. 43).

The same application asked the Applicant whether his use of alcohol ever resulted in the loss of a job, arrest by police, or any alcohol related treatment or counseling. It also asked whether he had ever consulted or been counseled by a mental health professional. The Applicant answered "no" to both questions. (See, Government Exhibit 1, Questions 20.d., and 20.f.). The Applicant explained that he was under the impression that the information concerning his treatment and counseling were confidential. (Tr. Pgs. 40-43).

I find the Applicant's statement of December 17, 1982, and his responses to questions on his Security clearance application of September 29, 1995, concerning his drug history were a deliberate attempt to conceal material information from the Government. The Applicant's responses to the questions concerning his illegal drug involvement were false, and the Applicant realized that they were false at the time he entered them on the questionnaire, and in his statement to DIS.

Paragraph 4 (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.

During the clearance screening process the Applicant knowingly provided false material information about the true extent of his past illegal drug involvement. As a consequence, the Applicant violated the felony provisions of 18 USC 1001 pertaining to false official statements.

The evidentiary record has been reviewed, but it does not contain sufficient evidence in mitigation which will overcome or outweigh the negative effects of the Applicant's repeated false statements to DoD, all of which were provided under a certification of truth or a sworn oath.

#### Mitigation.

Applicant's performance appraisals for 1996 and 1997, indicate that he "exceeds expectations for his grade." Letters of reference from the Applicant's supervisor and coworkers reflect that the Applicant is a valued employee in the company. His work product is excellent, and he is trustworthy and reliable. (See, Applicant's Post Hearing Exhibit).

The Applicant testified that his drinking has never interfered with his job performance. It appears that the Applicant genuinely regrets his mistakes of the past, to include providing false information about his illegal drug involvement. It is

evident from the Applicant's testimony that he has recently given serious thoughts as to his past misconduct and has begun to realize the gravity of his errors in judgment.

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

### 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:

None.

### 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;

#### 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.

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 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 per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in repeated instances of illegal drug and alcohol abuse, serious dishonesty, and criminal conduct, which demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a *prima facie* case has been established, 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 of persuasion in proving that it is clearly consistent with the national interest 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 been abused illegal drugs (Criterion H); that he has abused alcohol (Criterion G); that he has deliberately and intentionally falsified material facts in his sworn statement to DIS and on his security clearance application (Criterion E); and that he has engaged in criminal conduct (Criterion J). This evidence indicates poor judgment, unreliability and

untrustworthiness on the part of the Applicant.

Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's *prima facie* case.

Excessive use of alcohol and illegal drug abuse is clearly 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 abusive drinking and illegal drug use. Drug abuse is defined as the illegal or improper use, possession, sale or addiction to any 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 demonstrates a lack of respect for the law in his private affairs, then there exists the possibility that an Applicant may demonstrate the same attitude towards security rules and regulations.

The Applicant's twenty five year history of illegal drug and alcohol abuse, from 1970 to at least July 1995, which includes two inpatient treatment programs followed by relapses, show no significant evidence of reform. Despite the Applicant's good intentions, (that he wants to stop abusing illegal drugs and drinking alcohol), he has been unable to stop. At the time of the hearing, the Applicant was still drinking, and he had used marijuana just two weeks before the hearing. The Applicant has not been drug free for any significant period, and thus he has not sufficiently demonstrated that he has completely reformed, or that he will not return to his pattern of drug abuse in the future.

Equally troubling in this case is the fact that the Applicant lied to the Government in his sworn statement to DIS, and repeatedly lied on his security clearance application concerning his illegal drug involvement. This conduct is clearly in violation of Title 18, United States Codes, Section 1001, which is a felony. 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. This Applicant cannot be considered trustworthy, and does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Criterion E, (Personal Conduct) and Criterion 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 security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 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: 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: 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.

Paragraph 3: Against the Applicant.

Subpara. 3.a.: Against the Applicant.

Subpara. 3.b.: Against the Applicant.

Subpara. 3.c.: Against the Applicant.

Subpara. 3.d.: 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 interest to grant or continue a security clearance for the Applicant.

DARLENE LOKEY ANDERSON

Administrative Judge