

February 28, 1997

\_\_\_\_\_  
In Re:

-----

SSN: -----

Applicant for Security Clearance

\_\_\_\_\_

)

)

)

)

)

)

)

ISCR Case No. 96-0610

**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 August 28, 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 19, 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 November 22, 1996. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on November 27, 1996, and he submitted no reply.

This case was assigned to the undersigned for resolution on January 7, 1997.

## **FINDINGS OF FACT**

The Applicant is 41 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 admitted to abusing a variety of illegal substances during the period from 1973 to at least January 1996.

In 1974, the Applicant joined the military and began using marijuana about twice a week. He continued to use marijuana at this frequency until about 1990, when he reduced his use to twice per month. The Applicant continued to use marijuana, and last used it in January 1996. From 1980 until 1995, the Applicant usually purchased the marijuana he used spending about \$30.00 every couple of months. The Applicant has never sold marijuana.

In September 26, 1975, the Applicant received a non-judicial punishment for Possession of Marijuana/Hashish. He was reduced in grade from an E-2 to an E-1, fined approximately \$200.00 and required to perform 20 days extra duty.

The Applicant also used cocaine about 15 to 20 times from 1986 until 1988. He used amphetamines in the early 1980s and purchased it one time. He used psilocybin (mushrooms) twice in 1978. The Applicant also used hashish about twelve times and purchased it once in 1974.

On June 4, 1992, the Applicant received a Secret security clearance from the Department of Defense and continued to use marijuana. The Applicant stated the he believed that his limited use did not affect his ability to perform his job. The Applicant also stated that he did not believe his use of marijuana was a serious problem, it was not harmful, and it did not impair his judgment. (See, Applicant's Answer to SOR.)

The Applicant has no intentions of ever using any illegal drug again.

**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 January 29, 1992, the Applicant completed an application for security clearance which required him to indicate whether he has ever tried, used or possessed any illegal drug. The Applicant responded "yes", and listed that he had tried marijuana a couple of times at parties in 1987 and that he has had no association with illegal drugs since that time. (See, Government Exhibit 5, Question 20(a).) This was a false answer to a material question regarding the Applicant's true involvement with illegal drugs.

On the same application the Applicant was required to indicate whether he has ever been purchased any illegal drug. The Applicant responded "no". (See, Government Exhibit 5, Question 20(b).) This was also a false answer to a material question concerning the Applicant's true involvement with illegal drugs.

On August 2, 1995, the Applicant completed another application for security clearance which required him to again indicate whether he has ever tried, used or possessed any illegal drug. The Applicant responded "yes", and listed that he had tried marijuana a couple of times at parties in 1987 and that he had no association with illegal drugs since that time. (See, Government Exhibit 4, Question 22(a).) Again, this was a false answer to a material question regarding the Applicant's true involvement with illegal drugs.

On the same application the Applicant was again required to indicate whether he has ever purchased any illegal drug.

The Applicant responded "no". (See, Government Exhibit 4, Question 22(b).) Again, this was a false answer to a material question regarding the Applicant's true involvement with illegal drugs.

In a signed sworn statement dated January 29, 1996, before a Special Agent from the Defense Investigative Service, the Applicant stated that he had used marijuana about ten times from 1973 to 1987 and was not involved with any other illegal drugs and had not purchased any illegal drugs. (See, Government Exhibit 6.) These were false answers to material questions pertaining to the Applicant's involvement with illegal drugs.

The Applicant stated that he did not reveal the truth on his security clearance applications or in his sworn statement to the Defense Investigative service because he was afraid that the information would not be viewed in his favor and he was afraid of losing his job.

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.

#### Condition that could mitigate a security concern:

- (1) the drug involvement was not recent;

### Criterion E (Personal Conduct)

#### Conditions that could mitigate security concerns:

- (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 ward 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 I 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.

Conditions that could mitigate security concern:

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 alcohol abuse 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 falsified two security clearance questionnaires, and provided false information in a signed sworn statement to 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, cocaine, amphetamines, psilocybin mushrooms, and hashish at various times extending over a period of twenty four years, beginning in 1973 and continuing until as recently as January 1996. Furthermore, since June 1992, the Applicant has violated DoD policy by continuing to use marijuana while holding a security clearance.

With respect to the Applicant's use of cocaine, amphetamines, psilocybin and hashish, which appears experimental in nature, and last occurred in 1988, I find that this conduct occurred in the distant past, about nine years ago, and is no longer of security significance. Accordingly, allegations 1(d), 1(e), 1(f), 1(g), 1(h), and 1(i), are found for the Applicant.

However, the Applicant's long term involvement with marijuana is more recent and not mitigated. The Applicant used marijuana on a regular basis for twenty four years and last used it in January 1996, just thirteen months ago. From June 1992 until January 1996, the Applicant used marijuana while holding a Secret security clearance from the Defense Department. The Applicant only recently decided to stop his illegal drug use. The Applicant is commended for his recent effort to completely abstain from illegal drug use. However, considering the Applicant's long history of marijuana use, his violation of DOD policy, and the fact that he has only been drug free for 13 months, 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 on his 1992 security clearance application, his 1995 application, and his most recent sworn statement of 1996, by intentionally and deliberately providing the Government with false information to hide his continuing illegal drug involvement. This conduct is clearly in violation of Title 18, United States Code, Section 1001. 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 1992 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.: For the Applicant.

Subpara. 1.e.: For the Applicant.

Subpara. 1.f.: For the Applicant.

Subpara. 1.g.: For the Applicant.

Subpara. 1.h.: For the Applicant.

Subpara. 1.i.: For the Applicant.

Subpara. 1.j.: 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.

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

