

DATE: September 17, 1997

In Re:

SSN: -----

Applicant for Security Clearance

ISCR OSD Case No. 96-0650

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

Appearances

FOR THE GOVERNMENT

Martin H. Mogul, Esquire

Department Counsel

FOR THE APPLICANT

Pro Se

STATEMENT OF THE CASE

On November 13, 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 December 6, 1996. This case was assigned to the undersigned on January 13, 1997, and a Notice of Hearing was issued on January 16, 1997.

A hearing was held on February 6, 1997, at which the Government presented eight documentary exhibits. The Applicant presented one documentary exhibit, and called one witness.

The Applicant also testified on his own behalf.

The official transcript was received on July 31, 1997.

FINDINGS OF FACT

The Applicant is 43 years old, married and he holds an Associate Degree. He is employed as a Senior Electronic Technician by a defense contractor. He seeks to retain his Secret-level security clearance granted by DoD in connection with his employment in the defense industry.

The Government opposes the Applicant's request for 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 he abuses illegal substances.

The Applicant admitted to abusing a variety of illegal drugs including crystal methamphetamine, opium, hashish oil, crack cocaine, and marijuana at various times from 1969 until August 31, 1995. (See, Applicant's Answer to SOR).

In 1969, at the age of sixteen, the Applicant began using marijuana. By the age of eighteen, he was also using heroin. In July 1970, the Applicant joined the military. In 1972, he was deployed to -----, where marijuana and heroin were readily available, and he started using them daily. The Applicant became addicted to heroin during the fifteen months he was in ----- . The Applicant was honorably discharged in 1973, with a -----, and a -----, and he continued to use marijuana and heroin. He also continued to socialize with individuals who used illegal drugs. The Applicant stopped using heroin in 1974, but continued to use marijuana until about 1983. For six years, from 1983 until 1989, the Applicant was completely drug free and sober. Between 1989 and 1992, he used marijuana about three times. For three years, from 1992 until 1995, the Applicant was completely drug free and sober. He then used marijuana again about five times in 1995.

On December 9, 1993, the Applicant was granted a Secret-level security clearance by the Department of Defense.

The Applicant started using crystal methamphetamine in March 1995. He used it on a daily basis until his last use on August 31, 1995. During this six month period, the Applicant became addicted to it and spent at least two thousand dollars to supply his habit.

The Applicant used opium one time in 1995. He also used hashish oil at least once, and crack cocaine at least three times in 1995.

The Applicant has participated in a number of drug and alcohol rehabilitation programs which are discussed under Criterion G, below.

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

The Applicant is an admitted alcoholic who has been battling a drinking problem for the past twenty six years. The Applicant started drinking while in high school in 1967, and mainly drank beer. By 1978, he had turned to hard liquor, and was a daily binge drinker who had become physically addicted to alcohol. The Applicant's excessive drinking pattern was interrupted by periods of abstinence after his arrest in 1991, and during his treatments for his alcohol problem, and between 1983 and 1989, and 1992 and April 1995.

By 1991, the Applicant was drinking about a fifth to a fifth and a half of liquor per day. The Applicant's abusive drinking problem led to an arrest on December 6, 1991, for (1) Driving Under the Influence of Alcohol, (2) Driving with a blood alcohol level of .08 or above. The Applicant pled guilty to count (1) and was sentenced to 180 in jail, all but 48 hours was suspended, fined \$1,180.00, and his drivers license was also restricted. The Applicant was also required to enroll in the First Conviction Program and was placed on probation for five years. Count (2) was dismissed. (See, Government Exhibit 3). After this arrest, the Applicant checked himself into an inpatient alcohol treatment program.

The Applicant first received treatment from December 24, 1981 to January 16, 1982. He was diagnosed at that time with "Chemical Addiction (Alcohol) and Polydependency." Following a period of sobriety, the Applicant repeatedly relapsed and received detoxification and inpatient treatment from August 23, 1982, to August 29, 1982; from September 7, 1982 to October 12, 1982; from May 3, 1983 to May 5, 1983; and from July 3, 1983 to July 31, 1983. He was diagnosed with "Acute and Chronic Alcoholism, Acute and Chronic Addiction and Alcohol Hepatitis."

In February 1985, the Applicant provided a signed sworn statement to the Defense Investigative Service wherein he stated that he had discontinued all illegal drug and alcohol abuse, and had no intentions of any future use. (See, Government Exhibit 2).

The Applicant relapsed again and received treatment a fourth time from August 21, 1992, to September 18, 1992. The Applicant was diagnosed with "Alcohol Dependence and Alcoholic Liver Disease. From 1992 until April 1995, the Applicant completely abstained from all alcohol consumption. In April 1995, the Applicant started using alcohol again, about one half gallon of liquor per day.

The Applicant admits to drinking at lunch time during the work week from 1989 to 1992, and from April 1995 to May 1995, however he states that he never drank while on duty or at his place of employment. (Tr. Pg. 64). In May 1995, the Applicant's employer became aware of the Applicant's drug and alcohol problem, and ordered the Applicant to seek treatment. The Applicant entered his most recent drug and alcohol treatment program on June 1, 1995 to June 18, 1995; and from September 2, 1995 to September 29, 1995. He was diagnosed with "Alcohol Dependence, Severe, Alcohol Withdrawal, Status Post Alcoholic Hepatitis, Hepatitis B, in addition to ethamphetamine Dependence, Severe, Polydrug Abuse/Dependence, including marijuana, cocaine and heroin." Following this treatment, the Applicant spent nine months in a residential recovery home which included Alcohol Anonymous meetings. The Applicant has not had any alcohol to drink since September 1, 1995, and he has no intentions of ever drinking again. The Applicant's current recovery program includes regular attendance at Alcohol Anonymous meetings and working the twelve step program. The Applicant testified that, "...I'm doing the best I can not to drink again". (Tr. Pg. 62).

The Applicant further testified that as a result of his abusive drinking, he has suffered liver damage. He has also experienced black outs, seizures and delirium tremors.

Paragraph 3 (Criterion E- Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because of his conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations which could indicate that he will not properly safeguard classified information.

On several occasions, the Applicant purchased valium in -----, that he used to help him sleep, and to help him detoxify himself off of the alcohol. (Tr. Pg. 60). The Applicant testified that he had a prescription for valium from a doctor in ----- . The Applicant also purchased some kind of pain killer in -----, but was not sure if it was morphine. On some occasions the Applicant would inject himself with a mixture of crystal methamphetamine and vitamin B12. He stopped doing this for fear that his heart might stop.

Mitigation.

A letter from a government customer who has worked with the Applicant and known him for the past six years indicates that the Applicant has always been reliable, trustworthy and dependable. (See, Applicant's Exhibit A).

The Applicant's past supervisor who is also a recovering alcoholic testified that the Applicant is a very trustworthy and reliable person. (Tr. Pg. 89).

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:

None.

Criterion G (Alcohol Consumption)

Conditions that could raise a security concern:

- (1) alcohol-related incidents away from work, such as driving under the influence....
- (2) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job;
- (3) diagnosis by a credentialed medical professional of alcohol abuse or alcohol dependence;
- (4) habitual or binge consumption of alcohol to the point of impaired judgement.
- (5) consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program.

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

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 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 national interest 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 and alcohol 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 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); and that he has abused alcohol to excess (Criterion G). I have carefully considered all of the evidence in the record, and find that the Applicant 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 crystal methamphetamine, marijuana, opium, hashish oil and crack cocaine at various times extending over a period of twenty six years, beginning in 1969, and continuing until at least August 31, 1995. The Applicant became addicted to heroin while he was in Viet Nam in 1972, and addicted to crystal methamphetamine in 1995. He has undergone numerous drug treatment programs, and was diagnosed in 1995 with "Methamphetamine Dependence, Severe, and Polydrug Abuse/Dependence." As of the date of the hearing, the Applicant has been drug free for about seventeen months, and is again committed to a life without drugs. The Applicant appears sincere in his statement that he has no intentions of ever using any illegal drugs again. He is commended for his efforts at rehabilitation, and is encouraged to continue his drug free way of life. However, more time in rehabilitation is needed to show that the Applicant will not relapse, and return to using illegal drugs. Accordingly, Criterion H, (Drug Involvement), is found against the Applicant.

Equally as serious is the Applicant's addiction to, and long term involvement with, alcohol abuse. The Applicant is an alcoholic who has a twenty six year pattern of abuse, which includes a series of recoveries followed by relapses. The Applicant's abusive drinking pattern is evidenced by an arrest for Driving Under the Influence of Alcohol in 1991, numerous alcohol treatment programs, and recent diagnoses by competent medical authority that the Applicant is an alcoholic in the advanced stages of his disease with related liver disease. The Applicant last became intoxicated in August 1995, just seventeen months before the hearing. Despite the Applicant's best intentions in 1985 never to use any illegal substance again, the Applicant has been unable to control his obsessions or remain drug and alcohol free for any longer than six years. Given the Applicant's extensive history of relapse, there has clearly been insufficient 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 G, (Alcohol Consumption).

The Government alleges that the Applicant's personal conduct shows questionable judgment by his purchase and use of valium and morphine from ----- without a prescription. The Applicant testified that he that he had a prescription from a doctor in ----- for the valium he purchased and used. The Applicant also purchased a pain killer, but was not sure if it was morphine. There is no evidence in the record to contradict the Applicant's testimony. Furthermore, there is insufficient evidence in the record to prove that the Applicant's conduct was illegal. Although I do not find that the Applicant used good judgment in mixing crystal methamphetamine and vitamin B12, the allegation is more appropriately addressed under Drug Involvement. Accordingly, I find for the Applicant under Criterion E, (Personal 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, and 2 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.: 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.

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: 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 not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

DARLENE LOKEY-ANDERSON

Administrative Judge