

DATE: August 8, 1997

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 96-0754

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

Appearances

FOR THE GOVERNMENT

Melvin A. Howry, Esquire

Department Counsel

FOR THE APPLICANT

*Pro Se*

**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 19, 1996. The case was assigned to the undersigned for resolution on January 9, 1997, and a Notice of Hearing was issued on January 16, 1997. A hearing was held on February 18, 1997 at which the Government presented four documentary exhibits. The Applicant presented three documentary exhibits and called one witness. The Applicant also testified on his own behalf. The Applicant submitted one Post-Hearing exhibit. The official transcript was received on February 28, 1997.

**FINDINGS OF FACT**

The Applicant is 40 years old, married, and he is employed by a defense contractor as a Systems Technician. 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 1969 to at least July 1996.

In 1969, at the age of fourteen, the Applicant began using marijuana about once or twice a week until 1977. In 1977, his use decreased to about five or six times per year until about 1993. From 1993 to 1994, the Applicant did not use any illegal drugs. In 1994, the Applicant resumed his use of marijuana to about once every three or four months. The Applicant last used marijuana on July 4, 1996. During the period from 1969 through 1996, the Applicant occasionally purchased small quantities of marijuana for his own use. The Applicant has never sold any illegal drug.

In 1971, at the age of 16, the Applicant started using methamphetamine about once or twice a week until 1975. From 1975 until 1996, the Applicant used methamphetamine about three to six times per year. The Applicant last used methamphetamine in June 1996. During the period he used methamphetamine, he purchased it every two or three months spending no more than \$25.00 on each purchase.

From 1973 until 1983, the Applicant used cocaine on a weekly basis and also purchased it. The Applicant stopped using cocaine in 1983, because it was expensive, and it caused him to experience a numbing and burning sensation in his nose and a stomach ache.

The Applicant used LSD from 1970 until 1976, about once or twice per year and purchased it for his own use.

In 1983, the Applicant received a security clearance from the Department of Defense. Although he understood that DoD policy prohibited the use of illegal drugs, he disregarded it and continued to use both marijuana and methamphetamine.

The Applicant's last use of any illegal substance occurred in July 1996. In November 1996, the Applicant started a drug rehabilitation program that he has been regularly attending on a weekly basis and plans to continue. (See, Applicant's Exhibit B). The Applicant has also been receiving monthly individual psychological counseling. (See, Applicant's Post-Hearing Exhibit). The Applicant indicates that he has changed his life around and is now committed to a drug free lifestyle. 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 July 8, 1987, the Applicant completed an application for security clearance and an addendum dated July 23, 1987, which required him to indicate whether he has ever used any illegal drug. The Applicant responded "yes", and listed that he had used marijuana in January 1978. (See, Government Exhibit 2, Question 15(a) and Government Exhibit 4). This was a false answer to a material question regarding the Applicant's true involvement with illegal drugs. The Applicant intentionally failed to list his use of methamphetamine, cocaine, LSD and the full extent of his marijuana use.

On the same application the Applicant was required to indicate whether he has ever purchased, possessed or sold any illegal drug. The Applicant responded "no". (See, Government Exhibit 2, Question 15(b). This was a false answer to a material question regarding the Applicant's true involvement with illegal drugs. The Applicant had in fact purchased and possessed marijuana, methamphetamine, cocaine and LSD.

On January 6, 1996, the Applicant completed another application for security clearance which required him to indicate whether he has ever used any illegal substance since the age of 16 or within the last seven years, whichever is shorter. The Applicant responded "yes", and listed that he had used amphetamines three or four times from September 1980 to January 1991. (See, Government 1, Question 24(a)). Again, this was a false answer to a material question regarding the Applicant's true involvement with illegal drugs. The Applicant intentionally failed to list his marijuana use and the true extent of his methamphetamine use.

On the same application the Applicant was again required to indicate whether he has ever purchased or sold any illegal drug within the last seven years. The Applicant responded "no". (See, Government Exhibit 1, Question 24(c)). Again, this was a false answer to a material question concerning the Applicant's true involvement with illegal drugs. The

Applicant had in fact purchased marijuana and methamphetamine.

On September 10, 1996, the Applicant provided a signed sworn statement to the Defense Investigative Service where he admitted that he had lied on two security clearance applications concerning the true extent of his illegal drug involvement. (See, Government Exhibit 3). The Applicant stated that he did not reveal the truth because he was afraid to be too honest in that it would jeopardize his security clearance and his job.

The Applicant deeply regrets that he lied to the Department of Defense on his security clearance applications.

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.

### Mitigation.

Two letters of reference from the Applicant's coworkers reflect that he is a dedicated, hardworking, competent employee who is well respected and considered extremely reliable and trustworthy. (See, Applicant's Exhibit A).

The Applicant's wife testified that she and her husband no longer associate with people who use illegal drugs and any future illegal drug use is non existent. (Tr. Pgs. 76-77).

## 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 raise a 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;

#### 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.

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, by concealing material information concerning his past illegal drug involvement (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, methamphetamine, and LSD at various times extending over a period of twenty-eight years, beginning in 1969 and continuing until as recently as July 1996. Furthermore, since 1983, the Applicant has violated DoD policy by continuing to use marijuana and methamphetamine while holding a security clearance.

With respect to the Applicant's use of LSD, which last occurred in 1976; and his use and purchase of cocaine, which last occurred in 1983, I find that this conduct occurred in the distant past, over fourteen years ago, and is no longer of security significance. Accordingly, allegations 1(e), 1(f), 1(g), and 1(h), are found for the Applicant.

However, the Applicant's long term involvement with marijuana and methamphetamine is more recent and not mitigated. The Applicant used marijuana on a regular basis for twenty-eight years and last used it in July 1996, just eight months before the hearing. The Applicant used methamphetamine for twenty-five years from 1971 until June 1996. Since 1983, the Applicant used marijuana and methamphetamine while holding a security clearance from the Defense Department. The Applicant only recently decided to stop his illegal drug use altogether. The Applicant is commended for his recent effort to completely abstain from illegal drug use. However, considering the Applicant's long history of marijuana and methamphetamine use, his violation of DoD policy, and the fact that he has only been drug free for eight months as of the date of the hearing, 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).

Also troubling in this case is the fact that the Applicant repeatedly lied to the Government on his 1987 security clearance application, and his most recent 1996 application, 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 has held a security clearance under false pretenses since at least 1983, and did not come forward to tell the truth until he was contacted by the Defense Department in September 1996. 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 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 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.: Against 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.: 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.

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