

DATE: August 12, 1997

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 96-0809

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 8, 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 20, 1996. The case was assigned to the undersigned for resolution on April 21, 1997, and a Notice of Hearing was issued on April 23, 1997. A hearing was held on May 15, 1997, and the Government presented six documentary exhibits. The Applicant called one witness and testified on his own behalf. The official transcript was received on June 4, 1997.

FINDINGS OF FACT

The Applicant is thirty years old, unmarried, and he has a high school diploma. He is employed by a defense contractor as a Machinist, and he seeks a DoD 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 admitted to abusing a variety of illegal substances in 1984, and then during the period from 1991 to at least July 1996.

In 1984, during his senior year in high school, the Applicant used marijuana one time. On this occasion, the Applicant's friend blew marijuana smoke into the Applicant's mouth. The Applicant did not use marijuana again until 1991, after getting out of the military. From 1991, until July 1996, the Applicant used marijuana about three to eight times per year. The Applicant last used marijuana in July 1996.

During the period from 1991 to September 1996, the Applicant purchased marijuana for his own use and to share with his friends. The Applicant testified that on one occasion in 1991, he purchased an eighth or a half ounce of marijuana and spent about \$110.00 to purchase it. The Applicant further testified that he sold marijuana on one occasion for about \$35.00. The Applicant occasionally associates with people who use marijuana about three times a year.

The Applicant used cocaine on three separate occasions, once in 1984, while in high school, two or three times in about 1991, and he last used it in January 1996.

The Applicant used (crank) methamphetamine on two occasions, once in 1992 or 1993, and once in September 1995.

The Applicant used hashish one time in 1992 or 1993.

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 October 24, 1985, the Applicant completed an application for security clearance which required him to indicate whether he has ever used any illegal drug. The Applicant responded "no". (See, Government Exhibit 2, Question 20(a)). This was a false answer to a material question regarding the Applicant's true involvement with illegal drugs. The Applicant had in fact used marijuana and cocaine. The Applicant explained that at the time he filled out the application, he was drinking heavily and did not think about his drug use when he answered the question (Tr. Pgs. 25-26). I find that the Applicant intentionally falsified the answer to this question, and was clearly careless and used extreme poor judgement when he completed the application.

On January 18, 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 "no". (See, Government 1, Question 27). This was a false answer to a material question regarding the Applicant's true involvement with illegal drugs. The Applicant stated that he intentionally failed to list his use of marijuana, cocaine, (crank) methamphetamine and hashish because he was in fear of losing his job and his security clearance. (Tr. Pg. 28).

On the same application the Applicant was required to indicate whether he has ever purchased or sold any illegal drug for his own profit or that of another within the last seven years. The Applicant responded "no". (See, Government Exhibit 1, Question 29). Although the Applicant had purchased and sold marijuana, he stated that he has never purchased or sold it for profit. (Tr. Pg. 29). I find no falsification here and accordingly, allegation 2(c), is found for the Applicant.

On August 26, 1996, the Applicant provided a signed sworn statement to the Defense Investigative Service and he denied ever using marijuana. (See, Government Exhibit 5). The Applicant testified that during this interview he was nervous and worried about his security clearance and his job, and concealed his illegal drug use in order to maintain his position with his company.

On August 27, 1996, the Applicant provided another signed sworn statement to the Defense Investigative Service where he admitted that he used marijuana, cocaine and hashish. However, the Applicant intentionally failed to reveal his use of (crank) methamphetamine. The Applicant was not entirely truthful regarding the full extent of his illegal drug use because he was concerned that the truth would effect his security clearance and his job.

On September 23, 1996, the Applicant met again with the Defense Investigative Service for purposes of undergoing a polygraph examination, and he provided another signed sworn statement. In this statement, the Applicant revealed that he had also used (crank) methamphetamine on two occasions, once in 1992 or 1993 and once in 1995. The Applicant also revealed that he had sold marijuana on one occasion in 1991. (See, Government Exhibit 3).

The Applicant testified that on most occasions where he used illegal drugs, he was also intoxicated with alcohol and his judgment was impaired. (Tr. Pg. 36). Due to health related problems, the Applicant has stopped drinking.

The Applicant admits that he was wrong when he lied to the Department of Defense on his security clearance applications and during his interviews with the Defense Investigative Service.

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.

The Applicant's supervisor testified that the Applicant is a good employee and a hard worker and he would like to keep him on the job. (Tr. Pgs. 39-40).

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;
- (3) deliberately providing false or misleading information concerning relevant and material matters to an investigator,

security official competent medical authority, or other official representative in 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.

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, 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 two sworn statements, 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 marijuana, cocaine, hashish and (crank) methamphetamine at various times extending over a period of fourteen years, beginning in 1984 and continuing until as recently as July 1996.

With respect to the Applicant's use of cocaine, hashish, and methamphetamine, which appears to be sporadic and experimental in nature, and last occurred in January 1996, I find that this conduct occurred in the distant past, over a year ago, and is no longer of security significance. The Applicant's use of marijuana occurred more regularly and frequently, about three to eight times per year from 1991 to July 1996. However, it has also been mitigated. The Applicant last used marijuana in July 1996, over a year ago. Accordingly, Criterion H is found for the Applicant.

Most troubling in this case is the fact that the Applicant repeatedly lied to the Government on two security clearance applications, and during two separate interviews with the Defense Investigative Service, 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. Based upon his repeated falsifications, the Applicant cannot be found to be sufficiently trustworthy 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: For the Applicant.

Subpara. 1.a.: For the Applicant.

Subpara. 1.b.: For the Applicant.

Subpara. 1.c.: For the Applicant.

Subpara. 1.d.: For the Applicant.

Subpara. 1.e.: For the Applicant.

Subpara. 1.f.: For the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: Against the Applicant.

Subpara. 2.c.: For 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