

April 21, 1997

In Re:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 96-0812

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 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 17, 1996. This case was transferred to the undersigned on February 18, 1997, and a Notice of Hearing was issued on February 26, 1997.

A hearing was held on April 8, 1997, at which the Government presented two documentary exhibits. The Applicant presented two documentary exhibits, and testified on his own behalf. The Applicant also submitted one Post-Hearing

Exhibit.

The official transcript was received on April 18, 1997.

FINDINGS OF FACT

The Applicant is twenty five years old, unmarried, and he has a Bachelors of Science Degree in Electrical Engineering. He is employed as an Engineer, and is applying for a Secret-level security clearance in connection with his employment.

The Government opposes the Applicant's request for a 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 has admitted to abusing a variety of illegal drugs from about November 1990, to at least July 1996. The Applicant has not used any illegal drugs since July 1996, and has made a commitment to stop using illegal drugs altogether.

In 1990, the Applicant began using marijuana, mainly on the weekends, while a freshman student in college. He continued to use it about three times a month primarily at parties and other social gatherings, until 1992. From 1992 until 1993, the Applicant's marijuana use increased to the point where he was using it at least two times a week, and sometimes daily. Because the Applicant was not applying himself to his studies, he took a year off from school to work in the -----, and returned to school in May 1993. From May 1993, until after he graduated in December 1995, the Applicant continued to use of marijuana, but much less than he had before. Since January 1996, the Applicant used marijuana six times. The Applicant last used marijuana on July 4, 1996, when he ate some in a brownie.

During the period he used marijuana, he also purchased it. The Applicant also sold marijuana to college friends from time to time. The Applicant has not purchased or sold any marijuana since October 1995.

During his college years, the Applicant also used cocaine, hallucinogenic mushrooms, ecstasy and LSD. In January 1992, the Applicant began using cocaine. The Applicant used cocaine about fifteen times, and last used it in November 1995. During this period, he purchased cocaine on five occasions, and it was given to him by friends on the other occasions.

The Applicant used hallucinogenic mushrooms on four occasions between October 1991, and May 1994. He purchased mushrooms on two occasions in October 1991, and in May 1994.

The Applicant used ecstasy on four occasions between November 1991, and September 1993. During this period, he purchased one pill on each of the four occasions.

From September 1991, to at least April 1992, the Applicant used LSD on four occasions. During this period, he purchased it three times.

In February 1996, the Applicant moved to the desert, began working for his current employer, and learned that he would be subject to random drug screening tests. Since moving, he has a new group of friends at work who do not do drugs. The Applicant has now made a commitment to stop using illegal drugs altogether. He has not used any illegal drug since July 1996, and has no intentions of using any illegal drug in the future.

Mitigation.

Letters from the Applicant's supervisor and the Applicant's father reveal that the Applicant is a dependable and conscientious person and a very good employee overall. A letter from the Department of the Air Force reflects an award the Applicant received for his hard work and dedication on the job. (See, Applicant's Exhibit A).

A Report of Investigation containing references from a number of the Applicant's college friends, indicate that they are aware of the Applicant's past illegal drug use. Several references indicate that the Applicant stopped using illegal drugs when he took his current employment. All of the references recommend the Applicant for a position of trust. (See, Applicant's Exhibit B)

Applicant's performance evaluation reflects that he meets all of the requirements of his position, and that he received a promotion within the last year. (See, Applicant's Post-Hearing Exhibit)

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 security concerns:

- (3) a demonstrated intent not to use illegal drugs in the future.

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). 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/or purchasing marijuana, cocaine, hallucinogenic mushrooms, ecstasy, and LSD at various times extending over a period of six years, beginning in 1990, and continuing until as recently as July 1996. It is recognized that the Applicant was young and immature when he engaged in most of his illegal drug use, however he continued to use marijuana after becoming employed, and even after becoming aware that he would be subject to random drug testing by his employer.

Since his last illegal drug use in July 1996, the Applicant has made a commitment to completely stop using illegal drugs. The Applicant is commended for his recent decision to stop using illegal drugs. However, given the fact that he has only been drug free for nine 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).

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 Paragraph 1 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.

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