

May 29, 1997

In Re:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 96-0896

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

Appearances

FOR THE GOVERNMENT FOR THE APPLICANT

Melvin A. Howry, Esquire
Quentin H. Smith, Esquire

Department Counsel

STATEMENT OF THE CASE

On December 12, 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 January 3, 1997. This case was assigned to the undersigned on February 10, 1997, and a Notice of Hearing was issued on February 26, 1997.

A hearing was held on April 16, 1997, at which the Government presented three documentary exhibits. The Applicant presented five documentary exhibits and called two witnesses to testify on his behalf. The Applicant also testified on his

own behalf.

The last official transcript was received on April 23, 1997.

FINDINGS OF FACT

The Applicant is thirty-three years old and unmarried, and he has a Bachelors Degree in Industrial Technology. He is employed by a defense contractor as a Design Engineer, and he 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 1983, to at least August 1996. The Applicant has not used any illegal drugs since August 1996, and has made a commitment to stop using illegal drugs altogether.

The Applicant began using marijuana almost every weekend during college from 1983 through 1984, with college friends at parties. From 1985 until 1989, his use of marijuana continued, but declined to about once or twice a month. After his graduation from college in 1989, the Applicant used marijuana from three to five times a year until August 1996. The Applicant last used marijuana in August 1996. Prior to August 1996, the Applicant last used marijuana four or five months earlier. The Applicant has no intentions of ever using any illegal drug again.

During the period he used marijuana, on many occasions it was given to him by friends. On other occasions, he would purchase it for his use. The Applicant testified that from 1983 to 1985, he spent about \$200.00 a year on marijuana purchases. The Applicant last purchased marijuana in 1989.

The Applicant also sold marijuana to his friends in increments of \$10.00 to \$25.00 from about 1983 until 1989. He states that he did not profit from the sale of marijuana because he sold it for what he had paid for it.

On one occasion in 1983/1984, the Applicant attempted to cultivate marijuana when he threw some marijuana seeds into a pot and watered them. The marijuana plant grew about an inch high and did not produce any usable marijuana.

In 1983, the Applicant used hashish on one occasion.

The Applicant started using cocaine in 1984. In the beginning, he used it on a monthly basis with friends, at parties, on weekends, until 1985. From 1985 to 1989, the Applicant's use of cocaine decreased to once or twice a year. From 1989 to 1993, he used it three times. The Applicant last used cocaine in 1993. During the period he used it, he also purchased it with friends by contributing monies towards it.

On two occasions in 1980, during his high school years, while employed at a local restaurant, the Applicant inhaled gases from a whipped cream dispenser which left him "lightheaded". There is no evidence in the record that establishes that the Applicant's conduct was illegal, or that the gas inhaled was an illegal substance.

In 1989, the Applicant began working for his current employer and became aware that illegal drugs were prohibited by his employer. Sometime later, in 1990 or 1991, he learned that the Department of Defense prohibited the use of illegal drugs. In August 1996, the Applicant received a job promotion and realized that his new position would require a security clearance. He made a decision at that time to stop using illegal drugs altogether.

The Applicant has no criminal record, and no health problems resulting from any illegal drug use. The Applicant has recently become engaged to get married, he has purchased a house with his fiancé, and is committed to maintaining a

drug free lifestyle.

Mitigation.

The Applicant's employment record since 1989, which also includes a performance appraisal for 1994 through 1995 reflects that the Applicant is a competent employee who has recently received a promotion for his good work and dedication on the job. (See, Applicant's Exhibit A).

A coworker of the Applicant testified that he knows of no defect in the Applicant's character which would preclude him from recommending the Applicant for a position of trust.

The Applicant's fiancé testified that she has told her fiancé that she will not tolerate the use of illegal drugs by someone who will be helping her to raise children in the future.

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 introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's *prima facie* case against him.

Drug abuse is defined as the illegal or improper use, possession, transfer, sale or addiction to any controlled or psychoactive substance, narcotic, cannabis or other dangerous drug. 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 an Applicant may demonstrate the same attitude towards security rules and regulations.

In this case, the Applicant abused illegal drugs, including marijuana, cocaine and hashish during a thirteen year period from 1983 to August 1996. It must be found that the Applicant's past drug abuse is clearly incompatible with the Applicant's security responsibilities. This is so because of the obvious potential for an unauthorized disclosure of defense secrets resulting from neglect or misadventure caused by the abuse of illegal drugs.

Under the particular facts of this case, however, the Applicant has successfully mitigated the Government's case. It is recognized that most of the Applicant's use of illegal drugs occurred during his college years, when he was young and immature, from 1983 until 1989. From 1989 until August 1996, he significantly decreased his marijuana use to occasional use, which occurred about three to five times a year. The Applicant's last use of marijuana in August 1996,

was an isolated incident, which he regrets and will not repeat in the future. Prior to August 1996, the Applicant had not used marijuana for four or five months. The Applicant stopped using cocaine in 1993. I find the Applicant's testimony to be credible and I am convinced that the Applicant has learned, and clearly understands, that he can no longer use illegal drugs and be eligible for a security clearance. The Applicant also understands that the Department of Defense will not tolerate the use of illegal drugs.

In addition, the Applicant has changed his lifestyle. The Applicant is presently engaged to be married, he has purchased a home, and no longer associates with individuals who use illegal substances. He is committed to his job, and is looking forward to a successful career. The Applicant has demonstrated that he has reformed and that his poor judgment of the past will not be repeated. Accordingly, Criterion H is found for the Applicant.

On balance, it is concluded that the Applicant has overcome the Government's *prima facie* case opposing his request for a continued security clearance. Accordingly, the evidence supports a finding for 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: 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.

Subpara. 1.g.: For the Applicant.

Subpara. 1.h.: For the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge