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Applicant for security clearance

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June 6, 1997

ISCR Case No. 96-0885

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR THE GOVERNMENT FOR THE APPLICANT

Melvin A. Howry, Esq. *Pro se*

Department Counsel

STATEMENT OF THE CASE

On December 10, 1996, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) 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 a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on February 5, 1997, and requested a hearing. The case was received by the undersigned on April 7, 1997, and a Notice of Hearing was issued on April 9, 1997.

A hearing was held on May 6, 1997, at which the Government presented 13 documentary exhibits, and called one witness. Testimony was taken from the Applicant who also submitted one post-hearing exhibit. The transcript was received on May 19, 1997.

FINDINGS OF FACT

The Applicant is 47, separated, and has a high school diploma. He is employed by a defense contractor as a flight line mechanic, and he seeks to retain a Top Secret-level DoD security clearance previously granted in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a continued security clearance, based upon the 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. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Criterion H - Drug involvement). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he abuses illegal drugs.

The Applicant first began using marijuana, cocaine and amphetamines in the late 1960s. His use was primarily on the weekends. In about 1973, the Applicant decided drug use was not for him and stopped using any illegal drugs. He was able to maintain this commitment for almost 20 years.

In about 1992-1993, the Applicant's second wife (from whom he is now separated), persuaded the Applicant to begin using crystal methamphetamine and marijuana. He quickly slipped back into a pattern of using the drugs on two to three out of every four weekends. Occasionally he would have to use crystal methamphetamine as a stimulant before going to work. During this time he also used some codeine that had been prescribed for his wife to recover from a hangover.

In June 1994, the Applicant entered the hospital for major medical problems, including a bout of depression, his drug use and cancer. After leaving the hospital the Applicant was able to remain clean and sober for about nine months. Beginning in early 1995, the Applicant once again began using marijuana and crystal methamphetamine, along with cocaine. He would use marijuana and/or crystal methamphetamine weekly to every other week. Between 1995 and 1996 the Applicant free based cocaine approximately 20 to 25 times. During 1996 the Applicant's frequency of use of illegal drugs gradually decreased. The Applicant testified that his last use of crystal methamphetamine had been on December 20, 1996. He expresses a credible intent not to use crystal methamphetamine or any other illegal drug in the future.

During the time that he was using illegal drugs, the Applicant purchased them for his own use, and also sold amphetamines and methamphetamine to recover his costs.

Paragraph 2 (Criterion E - Personal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

The Applicant was first interviewed by a Special Agent of the Defense Investigative Service (DIS) on May 15, 1980. In a signed, sworn statement the Applicant stated, "I have never used, sold, or been involved in the manufacture of any drugs or narcotics." (Government Exhibit 6 at page 2.) This was a false statement concerning the Applicant's former involvement with illegal substances.

On November 12, 1986, the Applicant completed an official DoD questionnaire in which he stated that he had not used, purchased or sold any illegal drugs other than marijuana. (Government Exhibit 1, questions 18.a. and 18.b.) These statements were false answers to material questions pertaining to the Applicant's former involvement with illegal substances.

On June 9, 1990, the Applicant completed an official DoD questionnaire in which he stated that he had not used, purchased or sold any illegal drugs. (Government Exhibit 2, questions 18.a. and 18.b.) These statements were false answers to material questions pertaining to the Applicant's former involvement with illegal substances. ⁽¹⁾

On November 24, 1993, the Applicant completed an official DoD questionnaire in which he stated that he had not used, purchased or sold any illegal drugs. (Government Exhibit 3, questions 22.a. and 22.b.) These statements were false answers to material questions pertaining to the Applicant's former involvement with illegal substances.

The Applicant was subsequently interviewed by a Special Agent of the DIS on March 23, 1994. In a signed, sworn statement the Applicant stated that he had not used any marijuana since approximately 1975. (Government Exhibit 7 at page 1.) This was a false statement concerning the Applicant's former and current involvement with illegal substances.

On January 12, 1995, the Applicant completed an official DoD questionnaire in which he stated that he had not used, purchased or sold any illegal drugs. (Government Exhibit 4, questions 20.a. and 20.b.) These statements were false answers to material questions pertaining to the Applicant's former involvement with illegal substances.

Government Exhibit 5 is a copy of Government Exhibit 4, a National Agency Questionnaire which the Beneficiary signed on January 12, 1995. That date is scratched out and the date November 20, 1995, has been written in. In all other respects, including signature, there is no difference between this exhibit and Government Exhibit 4. It is impossible for me to determine whether the Applicant actually signed this questionnaire on the day in question. Accordingly, I cannot find that the Applicant actually intended to make, or did make, a false official statement on November 20, 1995. Subparagraph 2.g. of the Statement of Reasons will be found for the Applicant.

The Applicant was interviewed by a Special Agent of the DIS on April 29, 1996. In that interview the Applicant admitted his current marijuana, cocaine and methamphetamine use but stated that he had last used crystal methamphetamine in March 1996. (Government Exhibit 9 at page 1.) This was a false statement concerning the Applicant's drug usage. In fact the Applicant had used crystal methamphetamine the day of the interview. In the rest of Government Exhibit 9 and in a signed, sworn statement dated August 19, 1996 (Government Exhibit 10), the Applicant correctly discussed his drug use in detail.

The Applicant stated that he had falsified his drug information because he was sure he would not get a job in the defense industry or a security clearance if he said he had used amphetamines. (Transcript at pages 47 to 50.) He further testified that he continued to make false statements about his drug usage because he was a drug addict in denial. (Transcript at page 53.)

Paragraph 3 (Criterion J - Criminal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has engaged in criminal acts.

As found above, the Applicant knowingly and willfully provided false material information to DoD during the clearance screening process. In so doing the Applicant violated the felony criminal provisions of 18 USC 1001.

Mitigation. The Applicant testified feelingly about how his drug use has hurt him over the years. He discussed how he has "hit bottom" and is now trying to climb out with the help of Alcoholics Anonymous and Narcotics Anonymous. As of the time of the hearing the Applicant had last gone to a meeting in March. It is obvious that he understands the impact his drug use has had on him and his intent is not to use illegal drugs in the future.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 and Section F.3. of the 1992 Directive, has set forth policy factors 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 factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. 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 E (Personal conduct)

Conditions that could raise a security concern:

(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 status, determine security clearance eligibility or trustworthiness, or award 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;

(5) a pattern of dishonesty or rule violations.

Conditions that could mitigate security concerns:

(None of the stated conditions have application in this case.)

Criterion H (Drug involvement)

Conditions that could raise a security concern:

(1) any drug abuse;

(2) illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution.

Conditions that could mitigate security concerns:

(None of the stated conditions have application in this case.)

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 concerns:

(None of the stated conditions have application in this case.)

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 factors (General Factors):

- a. The nature, extent and seriousness of the conduct
- 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 of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

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 drug abuse and incidents of falsification that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a 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 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 national interest to grant him or her a security clearance.

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 intentionally made false material statements to DoD, in violation of a criminal statute (Criteria E and 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, except in part. Regarding Paragraph 2 (Criterion E): Subparagraph 2.g. is found for the Applicant due to a lack of evidence that he signed that particular questionnaire on the date in question.

Applicant's crystal methamphetamine, cocaine and marijuana use ended only five months before the hearing. It is simply too soon, based on his drug abuse history, for me to conclude that he will not use drugs in the future. The long extent of Applicant's drug use, coupled with his lying about it seven times, persuade me that this Applicant is not yet eligible for a security clearance. Accordingly, Criterion H is found against the Applicant.

The Government relies heavily upon the integrity and honesty of clearance holders, and it is a negative factor for security clearance purposes where an Applicant has deliberately provided false information about material aspects of his or her personal background. Criteria E and J are found against the Applicant.

The Applicant's efforts at reform are noted, and he is commended for his decision to refrain from further drug use. Under the particular circumstances of this case, this evidence does not overcome the adverse information that has been presented by the Government.

On balance, it is concluded that the Applicant has failed to overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the 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.

Subparagraph 1.a.: Against the Applicant.

Subparagraph 1.b.: Against the Applicant.

Subparagraph 1.c.: Against the Applicant.

Subparagraph 1.d.: Against the Applicant.

Subparagraph 1.e.: Against the Applicant.

Subparagraph 1.f.: Against the Applicant.

Subparagraph 1.g.: Against the Applicant.

Subparagraph 1.h.: Against the Applicant.

Subparagraph 1.i.: Against the Applicant.

Subparagraph 1.j.: Against the Applicant.

Subparagraph 1.k.: Against the Applicant.

Subparagraph 1.l.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subparagraph 2.a.: Against the Applicant.

Subparagraph 2.b.: Against the Applicant.

Subparagraph 2.c.: Against the Applicant.

Subparagraph 2.d.: Against the Applicant.

Subparagraph 2.e.: Against the Applicant.

Subparagraph 2.f.: Against the Applicant.

Subparagraph 2.g.: For the Applicant.

Subparagraph 2.h.: Against the Applicant.

Paragraph 3: Against the Applicant.

Subparagraph 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 interest

to grant or continue a security clearance for the Applicant.

Wilford H. Ross

Administrative Judge

1. It is noted that, technically, the Applicant did not have to discuss in this or subsequent questionnaires the marijuana usage he had revealed in Government Exhibit 1. That acceptable omission, however, does not excuse his continued failure to discuss his other drug usage.