

DATE: February 11, 1998

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In Re:  
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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 97-0145

**DECISION OF ADMINISTRATIVE JUDGE**

**LOKEY-ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

William S. Fields, Department Counsel

**FOR APPLICANT**

*Pro Se*

**STATEMENT OF THE CASE**

On March 27, 1997, 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 May 14, 1997. This case was assigned to the undersigned on July 8, 1997, and a Notice of Hearing was issued on July 22, 1997.

A hearing was held on August 27, 1997, at which the Government presented eleven documentary exhibits. The Applicant submitted one documentary exhibit, and he testified on his own behalf.

The last official transcript was received on September 4, 1997.

**FINDINGS OF FACT**

The Applicant is 40 years old, married, and has a high school diploma and some college. He is employed by a defense contractor, and he seeks a Top Secret-level 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 marijuana and cocaine, at times monthly, from 1977 to December 1995. The Applicant's illegal drug use was secondary to his alcohol addiction. Since 1993, the Applicant used marijuana at social activities about once every three to four months while drinking alcohol. He also used cocaine about once every three to five months during social activities, while drinking alcohol. The Applicant has also purchased marijuana.

In 1984, the Applicant was in the process of joining the Navy Reserves, and was undergoing an induction physical, which included a urinalysis, when it turned up positive for controlled substances. On November 9, 1984, the Applicant was charged with the Use and Possession of a Controlled Substance. The Applicant then requested that he be released of his obligation to the Reserves.

In 1980, the Applicant became employed with a Defense contractor, and in 1986, he was granted a Secret-level security clearance from the Department of Defense.

On June 15, 1987, the Applicant provided a statement to the Defense Investigative Service (DIS)<sup>(U)</sup> wherein he stated that he had no future intentions of using marijuana. The Applicant contends that he was truthful when he made the statement as he did not intend on using marijuana again. He subsequently used marijuana and cocaine.

As a result of his May 22, 1996, arrest for DUI, (discussed below), the Applicant decided to obtain an evaluation to determine the extent of his problem with controlled substances.

On May 28, 1996, the Applicant was evaluated by an alcohol treatment center which diagnosed him with the disease of alcoholism, and marijuana and cocaine abuse. The Applicant was advised to enter and complete a two year treatment program for his addiction.

Paragraph 2 (Criterion G - Alcohol Consumption). The Government alleges that the Applicant is ineligible for clearance because he abuses intoxicants.

The Applicant is an admitted alcoholic, who began abusing alcohol in 1975, which continued until December 1995. His abusive drinking pattern, over a twenty year period, is evidenced by three arrests, and two citations for alcohol related offenses. Each of the arrests resulted in convictions, and he was either sentenced to jail, fined, or required to attend an Alcohol Information School or treatment program.

On February 28, 1976, the Applicant was charged with Driving While Intoxicated. The Applicant was found guilty, and fined \$242.00. On May 18, 1977, a warrant was issued for his arrest for failing to pay the fine.

The Applicant received citations on April 2, 1977, for Minor in Possession/Consumption of Alcohol; and on June 25, 1977, for using Prohibitive Language. The Applicant was found guilty in both instances and was fined. He was under the influence of alcohol at the time of the citations.

On September 17, 1982, the Applicant was arrested for (1) Operating a Vehicle Under the Influence of Intoxicants or Drugs, and (2) No Valid Drivers License. The Applicant was found guilty on both charges and was sentenced to 180 days in jail, with 179 suspended, was fined approximately \$317.50, and required to satisfactorily complete Alcohol Information School.

On May 22, 1996, the Applicant was arrested for (1) Driving Under the Influence of Intoxicating Liquor, (2) Child Under Five Years of Age not Properly Secured in Vehicle, (3) Person 16 Years of Age or Older Fail to Wear Seatbelt, and (4) Improper Lane Travel. The Applicant was awarded a deferred prosecution for two years in regard to Count 1, on conditions that he pay a fine of \$625.00, and receive an alcohol evaluation and treatment.

The Applicant elected to seek an evaluation and diagnosis of his condition, and on May 28, 1996, the Applicant was diagnosed with "Middle Stage Alcoholism." It was recommended by the counselors at the treatment facility that the Applicant enter treatment for alcoholism. The Applicant began treatment on May 28, 1996, the day he was diagnosed, and currently remains in treatment.

At the present time, the Applicant has completed the 30 day outpatient treatment phase, the 26 week follow up phase, and he is currently completing the third phase, which is a monthly monitoring program. The Applicant also has been regularly attending Alcoholics Anonymous (AA) meetings which are required as part of the treatment program. He has worked through the 12 steps of AA and has a sponsor. He will complete the treatment program in June 1988. As of the date of the hearing, the Applicant had completely abstained from alcohol for 15 months, and from illegal drugs for 20 months.

Paragraph 3 (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.

The Applicant completed an application for security clearance dated December 1, 1986, which asked him if he had ever been arrested. It also asked him if he had ever been convicted. The Applicant answered "yes," to both questions, and listed his arrest of September 17, 1982. (*See*, Government Exhibit 3, Questions 14.a., and 14.b.) The Applicant did not list his other arrests. He stated that he did not list his other arrests because they occurred in the distant past, ten years prior, and he did not remember them. (*See*, Applicant's Answer to SOR.)

The same application asked the Applicant whether he has ever used any illegal drug, and whether he had ever been involved in the illegal purchase of any illegal drug. The Applicant answered "no," to both questions. (*See*, Government Exhibit 3, Questions 15.a., and 15.b.) The Applicant stated that his use of illegal drugs was experimental in nature. He had tried it, but had not yet purchased it. He did not feel that this was use. He equated "use" with "abuse", so he answered "no" to such questions. (Tr. Pgs. 31-32.) He further explained that he did not falsify the question concerning his purchase of illegal drugs because he had not yet purchased any illegal drug as of the date of the questionnaire.

In a sworn statement dated June 15, 1987, before a Special Agent from DIS, the Applicant denied any alcohol related arrests except for his citations on April 2, and June 25, 1977. (*See*, Government Exhibit 4.) The Applicant stated that he did not list his other arrests because they occurred in the distant past, ten years prior, and he did not remember them.

The Applicant completed an application for security clearance dated May 13, 1996, which asked him if he had ever been charged with or convicted of any offenses related to alcohol or drugs. The Applicant answered "yes," and listed his arrest of September 17, 1982. (*See*, Government Exhibit 6, Question 24.) The Applicant did not list his other arrests. He stated that he did not reveal the other arrests because they occurred in the distant past, over twenty years prior, and he did not remember them. (Tr. Pg. 32.)

The same application asked the Applicant whether he had ever used any illegal drug since the age of 16, or in the last seven years, which ever is shorter. The Applicant answered "no." The Applicant did not reveal his use of marijuana and cocaine. (*See*, Government Exhibit 6, Question 27.) The Applicant stated that he did not feel that he was a user, and he could not admit or recognize that he had a problem. (Tr. Pg. 32.)

The same application also asked the Applicant whether he had ever used any illegal drug while employed as a law enforcement officer, prosecutor, or courtroom official, while possessing a security clearance, or while in a position directly and immediately affecting public safety. The Applicant answered "no". (*See*, Government Exhibit 6, Question 28.)

In a sworn statement dated August 6, 1996, before a Special Agent from DIS, the Applicant initially denied the use of illegal drugs in the past seven years, and then recanted and described his use of marijuana and cocaine while possessing a security clearance. (*See*, Government Exhibit 10.) The Applicant stated that he chose to reveal the true extent of his illegal drug use because he had learned in the AA program that you must be "rigorously honest or else we will die." The Applicant wanted to set the record straight no matter what the consequence. (Tr. Pg. 36.)

I find the Applicant's statement of June 15, 1987, and his responses to questions on his Security clearance applications of December 1, 1986, and May 13, 1996, concerning his arrest history were not a deliberate falsification. Rather, the events occurred so long ago, I am convinced that the Applicant simply forgot about them. Accordingly, allegations 3.a., 3.b., 3.d., and 3.g. are found for the Applicant. The Applicant's responses in 1986, concerning his purchase of illegal drugs were also not a falsification because the Applicant's purchase of marijuana occurred after completing the questionnaire. Accordingly, allegation, 3.c. (in part), is also found for the Applicant. However, his responses to

questions concerning his use of illegal drugs were a deliberate attempt to conceal material information from the Government. The Applicant's responses to the questions concerning his illegal drug involvement were false, and the Applicant realized that they were false at the time he entered them on the questionnaire.

Paragraph 4 (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.

During the clearance screening process the Applicant knowingly provided false material information about his past illegal drug involvement. As a consequence, the Applicant violated the felony provisions of 18 USC 1001 pertaining to false official statements.

The evidentiary record has been reviewed, but it does not contain sufficient evidence in mitigation which will overcome or outweigh the negative effects of the Applicant's repeated false statements to DoD, all of which were provided under a certification of truth or a sworn oath.

### Mitigation.

The Applicant testified that since receiving treatment for his drug problem and alcohol addiction, the Applicant has seen his life improve. He expresses no desire to ever use any illegal drug or alcohol again. It appears that the Applicant has made a strong commitment to his rehabilitation.

Applicant's performance evaluations from 1980 through 1993, indicate that he has grown over the years to become an "outstanding employee." His work product is excellent, and he is considered trustworthy and reliable. Letters of commendation from his company also reflect that he is exceptional on the job and a valued employee. (See, Applicant's Answer to SOR.)

It also appears that the Applicant genuinely regrets his mistakes of the past, to include providing false information about his illegal drug involvement. It is evident from the Applicant's testimony that he has recently given serious thoughts as to his past misconduct and has begun to realize the gravity of his errors in judgment.

## POLICIES

Enclosure 2 of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

### 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:

None.

### Alcohol Consumption

#### Conditions that could raise a security concern:

- (1) alcohol-related incidents away from work, such as driving under the influence....
- (4) habitual or binge consumption of alcohol to the point of impaired judgement.

#### Conditions that could mitigate security concerns:

None.

Criterion E (Personal Conduct)

Condition 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 statute, determine security clearance eligibility or trustworthiness, or award 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 concerns:

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 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 per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in repeated instances of illegal drug and alcohol abuse, serious dishonesty, and criminal conduct, which demonstrates poor judgment or unreliability.

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 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 abused illegal drugs (Criterion H); that he has abused alcohol (Criterion G); that he has deliberately and intentionally falsified material facts on his security clearance application (Criterion E); and that he has engaged in criminal conduct (Criterion J). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant.

Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's *prima facie* case.

Excessive use of alcohol and illegal 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 abusive drinking and illegal drug use. Drug abuse is defined as the illegal or improper use, possession, sale or addiction to any 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 demonstrates 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 marijuana and cocaine and became addicted to alcohol. The Applicant's primary substance of abuse was alcohol, and his illegal drug use was secondary. I find that the Applicant's fairly recent extensive drug and alcohol abuse is incompatible with the Applicant's security responsibilities.

Given the Applicant's long history of alcohol addiction and drug abuse, which began in 1975 and continued, over a twenty year period, until December 1995, I am not convinced that the Applicant has once and for all beaten his addiction. The Applicant began his treatment program as recently as May 1996. The Applicant has been alcohol free for only fifteen months, just over a year. He has been drug free for only twenty months, less than two years. The Applicant's testimony is credible, and so is his desire and intent to remain alcohol and drug free. However, battling the addiction to alcohol and a drug problem is obviously no easy chore, and additional time in rehabilitation would more amply guarantee the Government that the Applicant has in fact finally conquered his addiction. The Applicant has not been alcohol and drug free for any significant period, and thus he has not sufficiently demonstrated that he has completely reformed, or that he will not return to his pattern of alcohol and drug abuse in the future.

Assuming the Applicant continues to follow his prescribed treatment program, and in fact remains completely clean from drugs and alcohol, he is not precluded from reapplying for a security clearance in the future. However, at this time

it is much too early in his rehabilitation to ensure that he will not return to his old habits. The Applicant is commended for his efforts at turning his life around, and is encouraged to continue working towards a complete drug free lifestyle. It is evident that he has worked hard to get to this point, and he has made significant progress toward showing that he can be trusted. However, at this time he does not meet the eligibility requirements for access to classified information. Accordingly, Criterion H, (Drug Abuse) and Criterion G, (Alcohol Abuse) are found against the Applicant.

Equally troubling in this case is the fact that the Applicant, although admittedly in denial about his addiction, repeatedly lied on two security clearance applications concerning his illegal drug involvement. This conduct is clearly in violation of Title 18, United States Codes, Section 1001, which is a felony. 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. This Applicant cannot be considered trustworthy, and 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 security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1, 2, 3, and 4 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.

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.

Subpara. 2.e.: Against the Applicant.

Subpara. 2.f.: Against the Applicant.

Subpara. 2.g.: Against the Applicant.

Subpara. 2.h.: Against the Applicant.

Paragraph 3: Against the Applicant.

Subpara. 3.a.: For the Applicant.

Subpara. 3.b.: For the Applicant.

Subpara. 3.c.: For the Applicant (in part).

Subpara. 3.d.: For the Applicant.

Subpara. 3.e.: Against the Applicant.

Subpara. 3.f.: Against the Applicant.

Subpara. 3.g.: For the Applicant.

Paragraph 4: Against the Applicant.

Subpara. 4.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.

DARLENE LOKEY ANDERSON

Administrative Judge

1. The Defense Investigative Service was renamed in late 1997 to the Defense Security Service.