

Date : August 14, 1997

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0228

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

Appearances

FOR THE GOVERNMENT

Martin H. Mogul, Esquire

Department Counsel

FOR THE APPLICANT

Daniel M. Mahoney, Esquire

STATEMENT OF THE CASE

On March 24, 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 April 15, 1997. This case was assigned to the undersigned on June 2, 1997, and a Notice of Hearing was issued on June 27, 1997.

A hearing was held on July 29, 1997, at which the Government presented three documentary exhibits. The Applicant testified on his own behalf. The Applicant submitted one Post-Hearing exhibit.

The official transcript was received on August 6, 1997.

FINDINGS OF FACT

The Applicant is twenty-nine years old and unmarried, and he has a Ph.D. in Elementary Particle Physics. He is employed by a defense contractor as a Specialist Engineer, and he is applying for a confidential 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 1982, to at least December 31, 1996. (See, Applicant's Answer to SOR).

The Applicant began using marijuana while in high school in 1982, at the age of fifteen. From 1982 through 1996, the Applicant used marijuana about twice per week. In 1986, when the Applicant started college, his marijuana use tapered off to about once every other month until the fall of 1990. From the fall of 1990, during graduate school, until December 1996, the Applicant used marijuana about twice per year. The Applicant has not used marijuana since December 1996, and has no intentions of ever using any illegal drug again.

During the period the Applicant used marijuana, he also purchased it once or twice, spending \$25.00 per purchase. The Applicant last purchased it between 1985 and 1989, while in high school or early college. The Applicant testified that he still associates with individuals who use marijuana, but he does not feel any pressure to use marijuana when he is around them. (Tr. Pgs. 28, 40 and Government Exhibit 2).

During the period from 1982 through 1992, the Applicant used psilocybin mushrooms once or twice in high school, once in college, and once in early graduate school. The mushrooms were either purchased, or picked by the Applicant and his friends.

The Applicant used LSD once in 1982, and once in 1989. He first used it while in high school, and purchased it only once on that occasion.

The Applicant used cocaine during the period from 1985 through 1990, about five to ten times. The only time the Applicant purchased cocaine was in 1985, and he spent \$50.00 for it.

The Applicant graduated from graduate school in the spring 1996, and began his employment in the defense industry in November 1996. In mid-December 1996, the Applicant applied for a security clearance, and became aware that the Government was concerned about his past illegal drug involvement. Shortly after applying for the security clearance, the Applicant used marijuana on New Years Eve, December 31, 1996. The Applicant explained that when he used marijuana on New Years Eve, he was not aware that he would be re-interviewed, and did not think that anyone would know about his marijuana use. (Tr. Pg. 21). Since then, the Applicant has learned that the Department of Defense has a strict policy against illegal drug use, and does not tolerate it. The Applicant testified that he has now given up the use of all illegal drugs, and is committed to a drug-free lifestyle. (Tr. Pg. 39). The Applicant also testified, however, that if his security clearance had no bearing on whether he used marijuana, he would continue to use it. (Tr. Pgs. 39-40).

Mitigation.

The Applicant's performance evaluation for the period from March 1997 through August 1997, indicates that the Applicant has made significant and quality contributions to his department in the area of algorithms and software developments. (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 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 and purchased illegal drugs, including marijuana, psilocybin mushrooms, LSD and cocaine. 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 high school and college, when he was young and immature, and before he had joined the work force, during the period from 1982 until December 1996. The Applicant's use of psilocybin mushrooms, LSD and cocaine, which appears to be experimental in nature, last occurred in 1992, over five years ago, and is no longer of security significance. Although the Applicant's use of marijuana occurred more recently and frequently, it is also mitigated. The Applicant last used marijuana in December 31, 1996, and before that he last used it once in June 1996. Since December 31, 1996, the Applicant has stopped all illegal drug use, and has no intentions of ever using any illegal drug again. 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.

The Applicant has a strong desire to remain in the defense industry. Accordingly, he has chosen to stop using illegal drugs altogether, and has been completely drug free for almost eight months. The Applicant 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.

Subpara. 1.i. 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