

Date :September 10, 1997

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0321

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

Appearances

FOR THE GOVERNMENT

Martin H. Mogul, Esquire

Department Counsel

FOR THE APPLICANT

Pro Se

STATEMENT OF THE CASE

On May 2, 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 June 17, 1997 in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on July 18, 1997. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on August 4, 1997, and he submitted no reply.

The case was assigned to the undersigned for resolution on September 10, 1997.

FINDINGS OF FACT

The Applicant is thirty years old, married, and employed by a defense contractor. The Applicant is applying for a 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 has admitted to abusing marijuana several times a week, from 1989 to at least September 1996. His marijuana use normally occurred during the weekends and after work. Other than marijuana, he has not used any other illegal drug for the past seven years.

During the period he used marijuana, he also purchased it in small quantities, less than an ounce at a time. The Applicant has never sold or manufactured marijuana or any other illegal drug.

In a signed sworn statement to the Defense Investigative Service on September 19, 1996, the Applicant stated "Morally or philosophically, I see nothing wrong with my occasional use, and intend to continue using it to enhance my experiences in recreational settings." (See, Government Exhibit 5).

On June 17, 1997, the Applicant provided an answer to the Statement of Reasons wherein he recants his previous statement concerning his intent to use marijuana in the future. The Applicant stated that when he made his statement on September 19, 1996, he was not aware that his security clearance would be in jeopardy. The Applicant now states that he intends to discontinue all future involvement with marijuana. (See, Government Exhibit 3).

The Applicant further stated that the frequency of his use of marijuana in recent months has been considerably reduced from occasional use to rare use, and to stop altogether would not be difficult for him. (See, Government Exhibit 3).

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:

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 a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in off-duty illegal drug abuse which demonstrates poor judgment or unreliability on the Applicant's part.

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 interests to grant him or her a security clearance.

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. The improper involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information.

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 purchasing marijuana at various times extending over a period of at least seven years, beginning in 1989, and continuing until at least as recently as September 1996. In September 1996, the Applicant stated that he intended on continuing his use of marijuana in certain social settings, irrespective of the fact that its use and purchase is illegal and prohibited. Nine months later, on June 17, 1997, the Applicant stated that he changed his position because he became aware that his security clearance was in

jeopardy, and does not now intend to involve himself with marijuana in the future. Less than three months ago, the Applicant decided to stop his involvement with marijuana altogether. The Applicant is commended for his recent effort to completely abstain from marijuana. However, considering the Applicant's seven year history of marijuana use, the fact that he initially stated that he intended to continue using marijuana in the future, and the fact that he has only been drug free somewhere between two months and one year, 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.

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