

DATE: November 25, 1997

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0392

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On May 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, as amended by Change 3, 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 July 14, 1997. This case was assigned to the undersigned on August 28, 1997, and a Notice of Hearing was issued on September 11, 1997.

A hearing was held on September 26, 1997, at which the Government presented three documentary exhibits. The Applicant presented three documentary exhibits and called one witness to testify. The Applicant also testified on her own behalf. The official transcript was received on October 6, 1997.

FINDINGS OF FACT

The undersigned Administrative Judge completely and thoroughly reviewed the evidence of record, and upon due consideration of the same, makes the following Findings of Fact:

The Applicant is 24 years old and has a high school diploma. She is employed by a defense contractor as a Security Guard, and she seeks a Secret-level security clearance in connection with her 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 she abuses illegal substances.

The Applicant has admitted abusing marijuana, at times daily, from about 1988, to at least March 1996; methamphetamine, at times daily, from 1990 to at least March 1996; and LSD one time in 1988. (See, Applicant's Answer to SOR).

The Applicant began using marijuana in 1988, at the age of fifteen. Except for a six or seven month period when she was pregnant, she used it weekly to daily until May 1990, when she significantly reduced her usage. From 1990, until mid-1995, she used marijuana about once every two or three months. In mid-1995, she started using marijuana again on a daily basis. The Applicant stopped using marijuana in March 1996. In her sworn statement to the Defense Investigative Service on March 11, 1997, she denied ever purchasing marijuana. (See, Government Exhibit 2). However, she testified that she spent about \$25.00 a week on marijuana when she used it regularly. (Tr. Pgs. 22-23).

The Applicant started using methamphetamine in 1990, and continued on a weekly to daily basis until March 1996, when she stopped altogether. During the six years that she used methamphetamine, it was in powder form, and she would usually snort five or six lines on the days that she used it. The Applicant would get it from her brother-in-law, or purchase it from a dealer spending about \$20.00 a month for it. The Applicant has not used methamphetamine since March 1996. The Applicant never sold, manufactured or cultivated any illegal drug.

On March 20, 1996, as part of a casino's employment application process, the Applicant was given a random-drug urinalysis. The Applicant tested positive for marijuana. (See, Government Exhibit 3).

In December 1993, the Applicant's children were removed from her custody by Child Protection Services. The Applicant was subsequently ordered by the court to participate in and successfully complete a drug rehabilitation program in order to get her children back. From January 9, 1995 through January 23, 1995, the Applicant participated in the drug rehabilitation program; but she quit and did not complete it, because she did not have transportation to get to the treatment center. (Tr. Pg. 30).

On June 22, 1995, the Applicant began drug rehabilitation a second time. Again, she quit and did not complete it. The Applicant testified that she could not afford treatment after her children were taken away, because she was no longer receiving Aid to Families With Dependent Children, which had been paying for her treatment. (Tr pg. 30).

From March 12, 1996, through March 13, 1997, the Applicant participated in and successfully completed an extensive outpatient drug rehabilitation treatment program, which included weekly Narcotics Anonymous meetings. The Applicant testified that she has been drug free since March 1996, and has no intentions of ever using any illegal drug again. (See, Applicant's Exhibit A).

The Applicant has four children, who were all removed from her home because of two abusive fathers, and because of her admitted illegal drug use. The Applicant has severed her relationship with the two abusive fathers, and has recently married a man whom she trusts. She is trying to rebuild her life and is doing what she can to regain custody of her children. Her youngest child was recently returned to her custody after completing the one year drug rehabilitation program. Her new husband is very encouraging and supportive of her abstinence from drugs. The Applicant has also successfully completed a parenting class. (See, Applicant's Exhibit B).

Mitigation.

The Applicant's new husband testified that the Applicant had been involved in abusive relationships which caused her to seek drugs to escape reality. The Applicant is no longer in that type of environment, and that he does not, and will not tolerate any illegal drug use. The Applicant has shown significant progress toward building her self-esteem and gaining control of her life.

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 her 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

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 that it is clearly consistent with the national interest to grant him or her a security

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. 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. If an Applicant has demonstrated a lack of respect for the law in her private affairs, then there exists the possibility that 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 not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's *prima facie* case against her.

The Applicant abused marijuana and methamphetamine during an eight year period from 1988 through March 1996. I find that the Applicant's fairly recent extensive drug abuse is 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.

With respect to the Applicant's one time use of LSD in 1988, which occurred nine years ago and has not been repeated, it is no longer of security significance. Accordingly, allegation 1.g., is found for the Applicant.

The Applicant has recently completed a one year outpatient drug rehabilitation program and has been completely drug free for about eighteen months. The Applicant is commended for her recent efforts at turning her life around, and is encouraged to maintain her drug free lifestyle. It is evident that she has worked very hard to get to this point, and that she has made significant progress toward showing that she can be trusted. However, given the extent of her past drug abuse, it is much too early in her rehabilitation to ensure that she will not return to her old habits. The Applicant is not precluded from applying for a security clearance in the future. However, at this time, she does not meet the eligibility requirements for access to classified information. Accordingly, Criterion H is found against the Applicant.

On balance, it is concluded that the Applicant has not overcome the Government's *prima facie* case opposing her 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.

Subpara. 1.d.: Against the Applicant.

Subpara. 1.e.: Against the Applicant.

Subpara. 1.f.: Against the Applicant.

Subpara. 1.g.: For 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