



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	
SSN:)	ISCR Case No. 06-25807
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace L. Le'i, Esquire, Department Counsel
For Applicant: *Pro se*

January 31, 2008

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 3 August 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines J, H, and E.¹ Applicant answered the SOR 19 September 2007, and requested a decision without hearing. On 17 November 2007, she responded to DOHA's 25 October 2007 File of Relevant Material (FORM). The record closed 18 December 2007, when Department Counsel indicated no objection to the response. DOHA assigned the case to me 15 January 2008.

¹DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Findings of Fact

Applicant admitted the SOR allegations. Accordingly, I incorporate her admissions as findings of fact. She is a 31-year-old security officer employed by a defense contractor since July 2005. She has not previously held a clearance.

When Applicant applied for an industrial clearance in September 2005 (Item 1), she deliberately concealed her criminal record and drug use between October 1994 and November 2002 by answering “no” to questions 23a. (ever charged with or convicted of any felony), 23b (ever charged with or convicted of any drug offense), and 24 (illegal drug use, last seven years). In fact, she used marijuana and cocaine recreationally from 2001 to May 2003. In addition, she had been charged with felony robbery in October 1994 and felony narcotics possession in November 2002. She pled guilty to both charges.

On the robbery charge, she was convicted of felony accessory, and the disposition of the case tends to confirm her claim that she was the unwitting driver when two of her friends robbed a store they had stopped at. She served 49 days in jail, and received three years probation. In February 1998 her probation was terminated, and the charge reduced to misdemeanor accessory and dismissed. On the narcotics charge, she received 18 months probation before judgment on condition, among others, that she complete a one-year residential drug treatment program. She attended such a program between May 2003 and October 2004. In January 2005, she failed to appear in court as required to provide proof of her program completion, and a bench warrant was issued for her arrest. The ensuing legal issues were eventually resolved, and the charge against her was dismissed in June 2005. In June 2006, Applicant was interviewed during the course of her background investigation, and denied to the investigator that she had ever used illegal drugs.

Applicant has offered inconsistent and implausible explanations for her failure to disclose her criminal and drug abuse records. Despite the clear language of the questions she claims she failed to disclose her arrests because she thought they had been expunged and would not be discovered. Incredibly, she asserts her successful completion of the drug treatment program and continued abstinence from drugs as a reason for failing to disclose her drug use. Nonsensically, she states that she lied to the investigator about her drug use because she thought her criminal record had been expunged.

Policies

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an Applicant’s suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in RAG ¶ 2(a). The

presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline J (Criminal Conduct), Guideline H (Drug Involvement), and Guideline E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.²

Analysis

The government established a case for disqualification under Guideline J,³ and Applicant only partially mitigated the security concerns. The October 1994 accessory charge is mitigated by Applicant's age (18 at the time), the passage of time (13 years), and the circumstances of the offense (her unwitting involvement as driver).⁴ I have also considered the fact that her unwitting involvement as driver meant that she was essentially pressured into being a part of the criminal activity.⁵ However, the same mitigating factors do not apply to the November 2002 narcotics offense. Although the offense occurred over five years ago, Applicant successfully completed her probation requirements only 2½ years ago, in June 2005, and that result was delayed nearly six

²See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

³¶31.(a) a single serious crime or multiple lesser offenses; (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;

⁴¶32.(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

⁵¶32.(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

months because of Applicant's bench warrant and subsequent legal issues. Accordingly, I resolve Guideline J against Applicant.

The government established a case for disqualification under Guideline H,⁶ but Applicant mitigated the security concerns. Applicant's use of cocaine and marijuana was confined to a fairly short period of time (2001 to May 2003), was fairly infrequent, and ended over 4½ years ago.⁷ That abstinence from drug use is adequate to demonstrate an intent to refrain from drug use in the future.⁸ I conclude Applicant is unlikely to use illegal drugs in the future. Accordingly, I resolve Guideline H for Applicant.

The government established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns. She deliberately concealed her illegal drug use and criminal record from the government on her clearance application.⁹ She concealed the most recent of her crimes despite the fact that she had only satisfied the requirements of her probation before judgment four months before she completed the clearance application. Her varied explanations for her omissions are implausible, and undercut by the fact that she later lied to the investigator about having even used drugs.¹⁰ Further, none of the Guideline E mitigating conditions apply. The concealed information was relevant to a clearance decision. Her disclosure of illegal drug use and criminal conduct was neither prompt nor forthright. Indeed, for practical purposes, it was forced from her.

Applicant's failure to disclose her criminal record and illegal drug use shows a lack of candor required of cleared personnel. The government has an interest in examining all relevant and material adverse information about an Applicant before making a clearance decision. The government relies on applicants to truthfully disclose that adverse information in a timely fashion, not when it is perceived to be prudent or convenient. Further, an applicant's willingness to report adverse information about herself provides some indication of her willingness to report inadvertent security violations or other security concerns in the future, something the government relies on to perform damage assessments and limit the compromise of classified information.

⁶¶25.(a) any drug abuse. . . ; (c) illegal drug possession. . . ;

⁷¶26.(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

⁸¶26.(b). a demonstrated intent not to abuse any drugs in the future, such as; . . . (3) an appropriate period of abstinence;

⁹¶16.(a) 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, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

¹⁰¶16.(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;

Applicant's conduct suggests she is willing to put her personal needs ahead of legitimate government interests. I resolve Guideline E against Applicant.

Beyond the specific guidelines alleged by the government, the generally applicable disqualifying and mitigating conditions lead to the same result. Falsifications are a core security concern, as are criminal behavior (RAG ¶2(a)(1). Her behavior was deliberate and not due to circumstances beyond her control (RAG ¶2(a)(2); (RAG ¶2(a)(5). Her misconduct was both recent and frequent (RAG ¶2(a)(3). Applicant was 26 when she was arrested on the drug charge, nearly 29 when she falsified her clearance application, and over 29 when she lied to the investigator (RAG ¶2(a)(4).) Applicant's implausible explanations for her falsifications belie any claim to rehabilitation or behavioral changes (RAG ¶ 2(a)(6).) She clearly sought to mislead the government about her criminal and drug record (RAG ¶2(a)(7). Applicant's willingness to put her personal needs ahead of legitimate government interests increases her potential vulnerability and she has not demonstrated that the misconduct is unlikely to recur (RAG ¶ 2(a)(8); RAG ¶ 2(a)(9). Overall, the record evidence leaves substantial doubt about Applicant's eligibility and suitability for a security clearance. Accordingly, I conclude Applicant has not mitigated the security concerns arising from her criminal conduct and falsifications.

Formal Findings

Paragraph 1. Guideline J: AGAINST APPLICANT

Subparagraph a: For Applicant
Subparagraph b: Against Applicant

Paragraph 2. Guideline H: FOR APPLICANT

Subparagraph a: For Applicant
Subparagraph b: For Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph a: Against Applicant
Subparagraph b: Against Applicant
Subparagraph c: Against Applicant
Subparagraph d: Against Applicant

Conclusion

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 Applicant. Clearance denied.

JOHN GRATTAN METZ, JR
Administrative Judge