

KEYWORD: Personal Conduct

DIGEST: Applicant is a 20-year-old data entry clerk employed by a federal contractor. At age 18, she gave a false answer on a security clearance application. She has taken positive steps to alleviate the circumstances that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur. She successfully mitigated the security concerns about personal conduct. Clearance is granted.

CASENO: 06-22605.h1

DATE: 06/30/2007

DATE: June 30, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-22605
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
CHRISTOPHER GRAHAM**

APPEARANCES

FOR GOVERNMENT

Caroline H. Jeffreys, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 20-year-old data entry clerk employed by a federal contractor. At age 18, she gave a false answer on a security clearance application. She has taken positive steps to alleviate the circumstances that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur. She successfully mitigated the security concerns about personal conduct. Clearance is granted.

STATEMENT OF THE CASE

On June 23, 2005, Applicant submitted a Security Clearance Application (SF86).¹ The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6 ¶ E3.1.2 *Defense Industrial Personnel Security Clearance Review Program (Directive)*, dated January 2, 1992, as amended, DOHA issued a Statement of Reasons (SOR) on December 14, 2006, detailing the basis for its decision – security concerns raised under Guideline E (Personal Conduct) of the Directive. The President issued revised adjudicative guidelines (AG) on December 30, 2005. DoD implemented them effective September 1, 2006. Pending official amendment/reissue of DoD Directive 5220.6, the AG are to be used in all cases when the SOR is issued on or after September 1, 2006. Because the SOR was issued after September 1, 2006, this case proceeds under the revised guidelines.

Applicant answered the SOR in writing on December 27, 2006 and January 26, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on February 21, 2007, and a Notice of Hearing was dated on February 28, 2007. I convened a hearing on March 14, 2007, to consider whether it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Applicant knowingly and voluntarily waived the 15-day notice rule.² The government offered one exhibit, marked as Exhibit 1. Applicant offered one exhibit, marked as Exhibit A. DOHA received the transcript (Tr.) on March 27, 2007.

FINDINGS OF FACT

Applicant admitted the allegation contained in the SOR. The admission is incorporated herein as a finding of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 20-year-old data entry clerk employed by a federal contractor.³ She is single and has one child.⁴ She is a high school graduate.⁵ She has no military service, and this is her first application for a security clearance.⁶

When Applicant executed her security clearance application, on June 23, 2005, she answered “No” to the following question: “**27. Your Use of Illegal Drugs and Drug Activity - Illegal Use**

¹Government Exhibit 1 (Security Clearance Application (Standard Form 86), dated June 23, 2005.

²Tr. at 5.

³Tr. at 38-39.

⁴*Id.* at 38.

⁵*Id.*

⁶*Id.*

of Drugs Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenic (LSD, PCP, etc.), or prescription drugs?" She failed to disclose her use of marijuana from about 2002 to 2004.

Applicant admitted that she lied on this one question on her SF 86.⁷ She gave the following statement:

Basically, I wanted to apologize, because, yes, I did lie on the SF 86. But at the time, I was younger, and didn't really know what I was doing. I had just gotten out of high school, and I didn't really know the seriousness of the matter.⁸

When asked what she had learned in the last two years, she replied:

I learned a lot. I've learned I don't have a lot of the friends that I used to have. I stopped talking to a lot of people. Spiritually, I have changed my life, which altogether is going to change everything that I do, everything that I say, what, you know, how I act. I have matured, I believe, greatly with my daughter and with work. And my work ethic, I believe, has grown a lot more than when I first started. Like the witness said, at first, I never wanted to go to work because I didn't like it. I had just gotten out of high school, all my friends were going out and having fun. And I was going to this job, not knowing anything, and so it was a big change for me. And plus, I had a daughter at 17 years of age. That's a big deal, it still is. I'm now only 20 years old, and I have a two-year-old, but I've learned to take care of the responsibilities that I need to, and how I need to do it, and when I need to do it.⁹

Applicant's supervisor, who hired Applicant for her current job, testified. Applicant's supervisor is also the grandmother of her daughter. She had a career in the military, before working for the government.¹⁰ The witness made these observations about Applicant:

- "Her work ethic, since the time I hired her until now has improved 100%."
- "She has done a great job of changing her life, and that's why I came today."
- "It took her about nine months for her to grow up, to understand that this is a real world, this is a really good job."

⁷*Id.* at 10.

⁸*Id.* at 11.

⁹*Id.* at 37.

¹⁰*Id.* at 15.

- “When I hired her, she did not realize the security level of the job; she didn’t understand it. All of her friends were just getting out of high school. They worked at McDonald’s, Burger King, anything they could get their hands on. But this was a real high-level job. None of her family had ever worked for the government and none of them had ever had that expectation. So she couldn’t understand how serious this was.”
- “I am proud of her. She’s changed, she had to drop a lot of her friends, and she had to work in an environment that’s really hard.”
- “I’ve hired over 120 people, 85% of them between 18 and 21 years old. Only about 15% make it. Those that don’t just didn’t understand the seriousness of this. But I’m proud to say that I feel she has come a long way, not only in business, but as a mother.”¹¹

About two months on the job, her supervisor heard rumors about Applicant’s drug use. When she confronted Applicant, she denied using drugs. After telling her about the seriousness of the situation, and that “we have a lie detector which will get to the truth about this”, Applicant admitted her use of marijuana. Her supervisor then called the facility security officer (FSO) and reported the false answer. The FSO advised her the SF 86 had already gone forward, and that Applicant should inform the Defense Security Service (DSS) investigator when an interview was conducted, which she did.¹²

POLICIES

In an evaluation of an applicant’s security suitability, an administrative judge must consider the “Adjudicative Guidelines for Determining Eligibility For Access to Classified Information” (Guidelines). In addition to brief introductory explanations for each guideline, the guidelines are divided into disqualifying conditions and mitigating conditions, which are used to determine an applicant’s eligibility for access to classified information.

These guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these guidelines in conjunction with the factors listed in the adjudicative process. Guidelines ¶ 2. An administrative judge’s overarching adjudicative goal is a fair, impartial, and common-sense decision. Because the entire process is a conscientious scrutiny of a number of variables known as the “whole person concept,” an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.¹³

Specifically, an administrative judge should consider the nine adjudicative process factors listed at Guidelines ¶ 2(a): “(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency

¹¹*Id.* at 13-15.

¹²*Id.* at 22, 28-31.

¹³Guidelines ¶ 2(c).

and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.”

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.”¹⁴ In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, facts must be established by “substantial evidence.”¹⁵ The government initially has the burden of producing evidence to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence and prove a mitigating condition. Directive ¶ E3.1.15 provides, “The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” The burden of disproving a mitigating condition never shifts to the government.¹⁶

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive and the guidelines include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

¹⁴Guidelines ¶ 2(b).

¹⁵Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). “Substantial evidence” is “more than a scintilla but less than a preponderance.” *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

¹⁶*See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

The scope of an administrative judge's decision is limited. Nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism.¹⁷

CONCLUSIONS

Guidelines ¶ 15. The Concern. Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Guidelines ¶ 16. Conditions that could raise a security concern and may be disqualifying include:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant admitted that she lied on her security clearance application when asked about illegal drug use. The government established its case under Guideline E.

Guidelines ¶ 17. Conditions that could mitigate security concerns include:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant did not voluntarily come forward and admit her mistake. It was only after being confronted by her supervisor that the truth came out. To her credit, she told the truth to the DSS investigator, and she has shown remorse for her omission. Mitigating condition ¶17(a) does not apply.

On the other hand, Applicant has taken positive steps to avoid illegal drug use by no longer associating with those with whom she smoked marijuana, she has matured, and now demonstrates responsibility at her job, and she has shown responsibility in raising her child.. I base this on the testimony of her supervisor, who although has a personal family relationship with Applicant, did not let that relationship influence her decision to notify the FSO that Applicant falsely answered one question on her SF 86. She placed the requirements of her job ahead of attempting to cover up for

¹⁷Executive Order 10865, § 7.

Applicant (which she did not do). I believe she is a person of integrity and character, and that her testimony about Applicant is truthful and credible. Mitigating condition ¶ 17(d) is applicable.

Whole Person Analysis

“The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance.”¹⁸ “Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”¹⁹ In evaluating Applicant’s case, in addition to the disqualifying and mitigating conditions, I also considered the “whole person” concept in evaluating Applicant’s risk and vulnerability in protecting our national interests.²⁰ I considered her age (20), her education, her employment, and what might have motivated her to be less than truthful. Applicant supplied a false answers on a security clearance application. This is problematic because candor with the government about a person’s negatives is the crux of a trustworthiness determination. If a person discloses their personal adverse information, then he or she is more likely to be trustworthy with confidential or classified information.

Applicant was 18 and immature when she answered the SF 86. She has had to grow up in a hurry, especially having the responsibility of a young child. She has turned her life around in the last year and a half, understands the seriousness of her mistake, and I am confident she will not make this kind of mistake in the future. This is an isolated incident involving one question. It happened over two years ago. While one might argue that more time should elapse, the evidence shows that Applicant understands the need to protect classified information. And the evidence shows that she is sufficiently mature and will now exercise good judgment and discretion that is expected of one who holds a security clearance.

I also place strong emphasis on her supervisor’s testimony. If she did not believe that Applicant was ready for a security clearance, she would not have testified. I give her credence because she did what she had to do as a supervisor, not as the child’s grandmother. She notified security about Applicant’s false answer on the SF 86. Her Army experience and her work for the government have given her insight into what is required for a security clearance. She has experience with over a hundred people she has hired that are in Applicant’s age range. It is for these reasons that I conclude it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline E: FOR APPLICANT

¹⁸Directive ¶ E.2.2.1.

¹⁹*Id.*

²⁰*Id.*

Subparagraph 1.a:

For Applicant

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Christopher Graham
Administrative Judge